Supreme Court, U.S.
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No. (1)

IN THE
SUPREME COURT OF THE UNITED STATES

Juan Bautista Rivera,

Petitioner,

v.

The Superior Court Of The State Of California In And For The County Of Solano, Real Parties In Interest, Mary L. Snow and Stephen M. Snow

Respondents.

On Petition For Writ of Certiorari To The Superior Court Of The State of California In And For The County Of Solano.

PETITION FOR WRIT OF CERTIORARI

Juan Bautista Rivera
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

QUESTIONS PRESENTED

1. Whether, Respondents' can tortuously create and maintain their side front yard XYLOSMAS shrub and hedges in violation of the local, state and federal statutory provisions involved, and as direct and proximate result cause waste onto their property and damages and waste onto petitioner' property and interfere with petitioner rights to enjoyment of life and property as other members of the community.

2. Whether under the constitutional and statutory provisions involved, Respondents' after their *oral* transfer, delegation, proposal and *agreement* with Petitioner' on (June 22, 2005 on or about 9:45PM), to *cut down*, Respondents' tortuously created and maintained variances, nuisances, waste and *violations* onto their property and onto Petitioner' property, can willfully, suppress, aver and state a set of different thins and/or intentionally spoliate their *oral agreement* and arrest, prosecute and file suits' against Petitioner' as herein claimed and alleged, and/or whether under the recited constitutional and statutory provisions involved, and Petitioner' *reliance and performance to cut down* Respondents' tortuously created and maintained variances, nuisances, waste and *violations* onto compliance, can diminishes, Respondents' property value, so as to deny Petitioner' the rules of spoliation of contract and evidence, estoppel and his constitutional and statutory provisions involved.

3. Whether the lower courts abuse their discretion in denying Petitioner' petition for writ of certiorari and/or petition for review when the petitions' are brought to enforce or protect Petitioner' substantial rights to enforce Respondents' *oral agreement* to bring Respondents' recited *violations* onto compliance, with local, state and federal, constitutional and statutory provisions involved, and the member of the community, conditions, covenants and restrictions and there is no other plain speedy and adequate remedy in the ordinary course of law or equity and/or whether the lower courts abuse their discretion in denying Petitioner' those rights under the state and federal constitutional and statutory provisions involved because it may have consider the case lest worthy of importance than other cases.

PARTIES

4. Juan Bautista Rivera, Petitioner' is Defendant' in the above named action.

5. Mary L. Snow and Stephen M. Snow are the Plaintiffs' and Real Parties in Interest in the above named action. [1]

6. In that Respondents' Mary L. Snow and Stephen M. Snow, have an interest that is directly affected by the proceedings in action titled Mary L. Snow, et al. v. Juan Rivera, Civil Action (FSC052747, and writs entitle Juan Bautista Rivera v. Superior Court of Solano County, FSC029178, FCS029830, A119639 and S158896) which holds judgment against Petitioner'.

7. Petitioner' is the person beneficially interested in issuance of a writ of certiorari in the actions titled Mary L. Snow & Stephen M. Snow v. Juan Bautista Rivera, (FSC052747, FSC029178, and writs entitle Juan Bautista Rivera v. Superior Court of Solano County, FCS029830, A119639 and S158896) which are neither appealable nor reviewable by appeal.

8. Respondents' Honorable Raymond C. Wieser, Honorable Franklin R. Taft, Honorable William C. Harrison, Hon. Justice Stein, Hon. Justice Swager, Hon. Justice Margulies and

[1] **The Defendant' is referred herein as Petitioner'. The Plaintiffs' and Real Parties in Interest are referred as, Respondents'.**

Honorable Chief Justice George, are now and at all times mentioned in this petition, judges of judiciary system of the state of California and/or in that capacity are and at all times relevant to this proceedings have determined that Petitioner' shall pay Respondents' for *cutting down* and Respondent's tortuously created and maintained variances, nuisances and waste and *violations* of the parties properties.

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JURISDICTION

9. On May 10, 2007, following trial de novo, the Superior Court of Solano County, filed judgment against Petitioner'. (*Appendix A, Reporters Transcripts, May 4, 2007, Appendix B, Pg. 47-48*). [2] No re-hearing or motion to vacate the Superior Court, judgment was sough as direct and proximate result of the finality of the trial de novo proceedings. (*Code of Civil Procedure § 116.780).*

10. Thus, on July 3, 2007, Petitioner' filed a Notice of Application for Writ of Certiorari and Writ of Certiorari to the Superior Court of Solano County, in the Appellate Department of the Superior Court of Solano County. (*California Rules of Court, Rule 8.490; Code of Civil Procedure § 1105, §1088, Excerpts of Petition for Certiorari, Appendix M*). On July 24, 2007, the Court, issued a NOTICE OF HEARING ON WRIT OF MANDATE. (*Appendix C*).

On September 11, 2007, Petitioner' appeared for hearing; the Respondent's failed answer or to appear; the Appellate Department of the Superior Court of Solano, then served Petitioner' with a tentative ruling, thus oral argument was then held, whereas Petitioner re-arise his constitutional and statutory rights involved, the court then again denied Petitioner' writ of certiorari. (*Appendix D and*

[2] **The May 4, 2007, Reporters Transcripts, will be referred herein after as (Appendix B).**

Reporters Transcript September 11, 2007, Appendix E). [3]

11. On November 6, 2007, Petitioner' filed a NOTICE OF APPLICATION FOR WRIT OF CERTIORARI with the Court of Appeal in and for the First Appellate District of the State of California.

The Court, on November 14, 2007, denied, Petitioner' writ of certiorari. (*Appendix F*).

12. On December 10, 2007, Petitioner' moved the Supreme Court and filed and application for relief from default and a petitioner for review, to file his petition for review.

On December 10, 2007, the Court, granted Petitioner' relief from default, and ordered briefing on the merits. (*Appendix G*). Respondents' answered by a party(s), off records; Petitioner' reply in opposition to Respondents' suppressions, alterations and differently stated of thins or spoliations of the proceedings. On January 16, 2008, the Court denied, Petitioner' Petition for Review. (*Appendix H*).

13. No petition for re-hearing was filed, as direct and proximate result of the finality of the denial of review by the Supreme Court of the State of California. (*California Rules of Court, Rule 8.264 (b) (2) (A)*).

14. This Court shall have jurisdiction under 28 U.S.C. § 1257.

[3] **The September 11, 2007, Reporters Transcripts, will be referred herein after as (Appendix E).**

NOTIFICATION

15. Neither United States nor any federal department, office, agency or employee is a party, neither California nor any state department, office, agency or employee thereof is a party. 28 U.S.C. 2403(b) may apply and the corresponding agency, have been served.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

16. **West's Ann. California, Civil Code § 1460. Covenants running with the land defined**

COVENATS RUNING WITH THE LAND, WHAT. Certain covenants, contained in grants of estates in real property, are appurtenant to such estates, and pass with them, so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee, in the same manner as if they had personally entered into them. Such covenants are said to run with the land. (Enacted 1872).

17. **West's Ann. California, Civil Code § 1462. Covenants running with the land; direct benefit of existing property**

SAME. Every covenant contained in a grand of an estate in real property, which is made for the direct benefit of the property, or some part of it then in existence, runs with the land. (Enacted 1872).

18. **West's Ann. California, Civil Code § 1465. Covenants running with land; person bound**

WHO ARE BOUND BY COVENANTS. A covenant running with the land binds those only who acquire the whole state of the covenantor in some part of the property. (Enacted 1872).

19. **West's Ann. California, Civil Code § 3479, Acts Constituting Nuisance.**

Any thin which is injurious the health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the sense, or obstruction to the free use of property, so as to interfere with the comfortable use enjoyment of life and property, or unlawfully obstructs the free or use, in customary manner of any navigate lake, or river, bay stream, canal or basin, or any public park, square, street, or highway is a nuisances. Leg. H. 1872, 1874 p. 268.

20. **West's Ann. California Civil Code §3481. Private Nuisance.**

Every nuisance not included in the definition of the last section is private. Leg. H. 1872.

21. **West's Ann California Civil Code § 3483. Liability of Successive Owners.**

Every successive owner of property who neglects to abate a continuing nuisance upon, or in the use of, such property, created by a former owner, is liable thereof in the same manner as the one who first created it. Leg. 1872.

22. **West's Ann. Code of Civil Procedure § 731. Nuisance; action to abate; damages parties**

authorized to sue; public nuisance

Any action may be brought by any person whose property is injurious affected, or whose personal enjoyment is lessened by a nuisance, as the same is defined in section thirty-four hundred and seventy-nine of the Civil Code, and by the judgment in such action the nuisance may be enjoined or abated as well as damages recovered thereof. A civil action may be brought in the same manner of the people of the State of California to abate a public nuisance, as the same is defined in section thirty-four hundred and eight of the Civil Code, by the district attorney of any county in which such nuisance exist, or by the city attorney of any town or city in which such nuisance exist, and each of said officers shall have concurrent right to bring such action for a public nuisance existing within the town or city, and such district attorney, or city attorney, of any county or city which the nuisance the nuisance exists must bring such action whenever directed by the board of supervisors of such county or whenever directed by the legislative authority of such town or city. (*Enacted 1872. Amended by Stats 1905. c 128, § 1.*)

23. **City of Vacaville Land Use Development Front Yard Ordinance, Ch 14.09.074.120 — Masonry Walls and Fences, Section 14.09.074.120. A. 1. b.**

A. Standards. Walls and Fences shall conform to the following standards of this chapter or of any applicable specific plan or policy plan regulation regarding wall and fences, unless

otherwise provided by this section.

1. Wall and Fences Height.

b. Front yard. Walls, fences and hedges within the required front yard shall not exceed three feet in height.

24. **West's Ann. California, Civil Code § 1656. Implied Incidents**

NECESSARY INCIDENTS IMPLIED. All thins that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be executed.

Enacted (1872.)

25. **West's Ann. California, Civil Code § 1657. Performance; time**

TIME OF PERFORMANCE OF CONTRACT. If no time is specified for the performance of and act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—it must be performed immediately upon the thin to be done being exactly ascertained. (Enacted 1872.)

26. **West Ann. California, Evidence Code § 623. Estoppel by own statement or conduct**

When a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.

(Stats. 1965, c 299, 2, operative Jan. 1. 1977.)

27. **West's Ann. Code of Civil Procedure, Section 77. Appellate Department of superior court; composition; designated judges; decisions; transaction of business; jurisdiction and powers; procedure**

(a) In every county, there is an appellate division of the superior court consisting of three judges or, when the Chief Justice finds necessary, four judges.

The Chief Justice shall assign judges to the appellate division for the specific term pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence and quality of each appellate division. Each judge assigned to the appellate division of a superior court shall be a judge of that court, a judge of the superior court of another county, or a judge retired from the superior court or a court of higher jurisdiction in the state.

The Chief Justice shall designate one of the judges of each appellate division as the presiding judge of the division.

(b) In each appellate division, no more than three judges shall participate in a hearing or decision. The presiding judge of the division shall designate the three judges whom shall participate.

(c) In addition to their other duties, the judges designated as members of the appellate division of the superior court shall serve for the period specified in the order of designation. Whenever a judge is designated to serve in the appellate division of the superior court of a county

other than the county in which that judge was elected or appointed as a superior court judge, or if the judge is retired, in a county other than the county in which the judge resides, the judge shall receive expenses for travel, board, and lodging. If the judge is out of the judge's county overnight or longer, by reason of the designation, that judge shall be paid a per diem allowance in lieu of expenses for board and lodging in the same amount ad are payable for those purposes to justices of the Supreme Court under the rules of the * * *. California Victim Compensation and Government Claims Board * * *.

In addition, a retired judge shall receive for the time so served, amounts equal to that which the judge would have received if the judge had been assigned to the superior court of the county.

Additional changes indicated underline; deletions by asterisks * * *

(d) The concurrence of two judges of the appellate division of the superior court shall be necessary to render the decision in every case in, and to transact other business except business that may be done at chambers by the presiding judge of, the division. The presiding judge shall convene the appellate division when necessary. The presiding judge shall also supervise its business and transact any business that may be done at chambers.

(e) The appellate division of the superior court has jurisdiction on appeal in all cases in which an appeal may be taken to the superior court or to the appellate division of the superior court as provided by law, except where the appeal is a retrial in the superior court.

(f) The power of each appellate division shall be the same as are now or may hereafter be provided by law or rule of the Judicial Council relating to appeals to the appellate division of the superior courts.

(g) The judicial Council shall promulgate rules, not inconsistent with law, to promote the independence of, and govern the practice and procedure and the disposition of the business of, the appellate division.

(h) Notwithstanding * * * subdivisions (b) and (d), appeals from convictions of traffic infractions may be heard and decided by one judge of the appellate division of the superior court. (Stats 2006, c 538 (S.B. 1852), § 60

28. **West's Ann. California, Constitution Art. I, § 1. Inalienable rights.**

Section 1. All people are by nature free and independent and have inalienable rights. Among those are enjoyment of defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.
(Added. Nov. 5, 1974.)

29. **West Ann. California Codes, Constitution Art. I § 9.**

Sec. 9. A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed.
(Added Nov. 5. 1974.)

30. **United States Code Service, U. S. Constitution Art. I, § 10, Clause 1. Powers denied states—Treaties—Money—Ex post facto**

laws—Obligation of contracts.

No state shall enter into any treaty, alliance, or confederation; grand letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin and tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

31. **United States Code Service, U.S. Constitution Amendment 1**
Religious and political freedom.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances.

32. **United States Code Service, U.S. Constitution Amendment 9**
Rights retained by people.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

33. **United States Code Service, U.S. Constitution Amendment 14 Sec. 1 [Citizens of the United States.]**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

34. **United States Code Service, Title 42 U.S.C. § 1981. Equal rights under the law**

(a) Statement of equal rights. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to the punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other.

(b) "Make and enforce contracts" defined. For purpose of this section, the term make and enforce contracts includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contract relationship.

(c) Protection against impairment. The right protected by this section are protected against impairment by nongovernment discrimination and impairment under color of State law.

(R.S. § 1977; Nov. 21, 1991, P. L. 102-166, Title I, § 101 105 Stat. 1071.)

35. **United States Code Service, Title 42 U.S.C. § 1982. Property Rights of citizens**

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit,

purchase, lease, sell, hold, and convey real and personal property. (R. S. § 1978.)

STATEMENT OF THE CASE

36. This petition for writ of certiorari arises, to secure Petitioner's constitutional rights under the federal, state and local constitution and statutory law.

37. Petitioner' claims and realleges and incorporates by reference all paragraphs and provisions above-recited as though the same were fully set forth herein.

38. Petitioner' claims and alleges that on or about 1989 the City of Vacaville trough their zoning and planning agendas and their engineering studies, surveys and developments, approved the land were Petitioner' and Respondents' leaves, thus within their *police power* enacted, *City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b;* and *approved certain covenants, condition and restrictions, limiting* the community properties, *front yards, masonry wall, plants shrubs and hedges to (3) feet in height*, whereas Petitioner' on or about 1992, purchase his family residence.

39. The City engineering studies, surveys and developments for the community front yard shows to have on or about (*119*) inches of side front yard space between the adjacent property line's for *each party* front yard plants, shrubs and hedges, thus within that *limited* space, the *parties* back yard entry, takes approximately (*30*) inches of side

walk, for *each* entry, this reduces the *parties* front side yard land use space to about (*89*) inches, therefore planting those shrubs at the center, the *parties* will have (*44.5*) inches and/or (*3.8*) feet space *each* for the growing of *their* side front yard, plants, shrubs and hedges.

40. The developer in consideration thereto, in designing and decorating the subdivision, side and front yards, planted certain XYLOSMAS plants that are maintained through the community side and front yards within the (*3*) feet in height.

41. As direct and proximate result of the former owners of 1127 Beelard, divorce and/or separation, and their neglected property, on or about 2001, Respondents' became successors in interest to their property and as direct and proximate result of those side front yard XYLOSMAS plants, shrubs and hedges, *violations*, overgrowing over (*30*) feet in height and tortuously creating and causing a variance, nuisance, waste and damages onto Petitioner' storm drain and sprinkle system, and impairing and depriving Petitioner' of his right to enjoyment of life and property, Petitioner' between 2001-2003, gave Respondents' *oral notice* of their *violations* within the covenants, conditions and restriction and the constitutional and statutory provisions involved. [4]

[4] **In so acting, Respondents' *never took any action* to decease their *violations* onto their property and onto Petitioner' property, as he under oath he so testifies, Appendix B, Pg. 7, L. 7-16; See, Appendix I, Petitioner' evidence of his *second* notice on 11/11/03, Exhibit dated 11/15/03).**

42. **Afterward**, Respondents' Stephen M. Snow, trespassed onto Petitioner' private property and sought to by force and intimidations remove, Petitioner' family pets, Petitioner and his immediate family then needed to use force to close their residence door.

43. As direct and proximate result of Respondents' continuing, neglects and omissions within the above-recited *torts* and *violations*, Petitioner on ***11/11/03*** gave a *second oral notice* to Respondent' Mary L. Snow, and witness Samantha Snow; Respondent' Mary L. Snow then *reply* with *racial anarchies and slurs* against Petitioner: *"you Mexican are the worth people go over-there,"* thus, Petitioner' then reply by giving Respondent' ***(30)*** day's notice to decease abate the recited *torts* and *violations*.

44. In so acting, Respondent' then falsely and maliciously and without or reasonable or probable cause, sought the arrest of Petitioner' moreover, upon her failure to make the above-recited arrest, Respondent' **afterward** on 11/11/03, intentionally and maliciously joined in concert with Respondent' Stephen M. Snow, whom *subsequently* trespassed and assaulted and intimidated Petitioner' and his immediate family, Petitioner' and his immediate family then sought help form (911), whereas the Respondents' in obstruction of justice *evaded* their *arrest*, by suppressing and altering and differently averring and stating and spoliating the events at the scene of their intentional torts and

crimes. [5]

45. As direct and proximate result of the Respondents' continuing to neglect and omit, and continuing to tortuously create and maintain their variances, nuisances, waste, *violations* and *damages*, Petitioner' on *May 6, 2005*, gave a *third* and *written notice* to Respondents' of their torts and property rights violations and continuing threats as above-recited.

46. As direct and proximate result on *June 22, 2005, on or about (9:45PM)*, Petitioner' found Respondent' Stephen M. Snow, adjacent to Petitioner' property line, as direct and proximate result, Petitioner' conferred with Respondent' in references the above-recited *written notice* dated *May 6, 2006*, whereas Respondent' in want, and omission of his duty to maintain their property *orally* transferred, delegated and proposed onto Petitioner' to *cut down* [t]heir tortuously created and maintained variances, nuisances, waste and *violations* onto the *parties* properties.

47. On July 5th 2005 in *reliance* of the above-recited facts, *oral agreement* and federal , state and local, constitutional and statutory provisions involved, Petitioner' *cut down* the *Respondents'* tortuous created and maintained variances, nuisances, waste and *violations* onto compliance with the community statutory standards limits and

[5] **In so acting, Respondents' *never took any action* to decease their acts and violations. (Appendix I, Exhibit dated 11/15/03; Appendix to the S. Ct. Petition for Writ of Certiorari, Exhibit 8).**

the *parties* property rights under their conditions, covenant and restriction. (*City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b; Appendix K*).

48. *Although* that Respondents' had on June 2, 2005, made their *oral agreement* with Petitioner' and as direct and proximate result of Petitioner' *reliance* and *performance*, Respondents' on *July 5, 2005*, suppressing and altering and differently averring and stating and spoliating the above-recited *oral agreement*, sought and arrested Petitioner' for vandalism. (*Penal Code § 594*).

49. Moreover, as Petitioner' was *released* from the *above-recited* arrest, Petitioner' sought to clean-up, Respondents' branches and debrief of his property, whereas Respondents' *afterward* continue to suppress their *oral agreement* and thereto harass and took pictures of Petitioner' private images, Petitioner' then *objected* to Respondents' suppressions and averments of thins and *evasion* of Petitioner' *privacy*. *(Appendix, L).*

50. On July 6, 2005, Respondents' as above-recited sought a temporary restraining order and without *notice of action* and without *notice of hearing*, obtained a temporary restraining order against Petitioner. (FSC026290). Whereas, after service, Respondent' Mary L. Snow, *followed* Petitioner' through the streets of Vacaville, in so acting Respondent' Stephen M. Snow have *seek*, petitioner spouse. (*Appendix M, Pg. 13-14*).

51. Moreover, on or about July 7, 2005, Respondents' as above-recited, also sought a home

owner's insurer claim, in which they *subrogated* their *rights* of claims *to* their *insurer*, the insurer without investigation of facts or law, paid Respondents' claims in the amount of (2,011.67), and within their subrogated rights the insurer sought restitution from Petitioner'.

52. **Although,** that Respondents' were compensated, on or about October 26, 2006 commenced this action (*FSC052747*) against Petitioner' in the Superior Court of the State of California in and for the County of Solano.

53. In so acting as above-recited, Respondents' claimed 4,568.00 and alleged that Petitioner' *cut down* two trees on their property, and that he has been arrested and restrained by order of the civil department court. (*Superior Court of Solano,* (FSC052747), *Clerk Records, formSC-100; West's Ann. Code of Civil Procedure § 85 and § 86; § 116.110*).

54. **Accordingly'** to Respondent's acts and agreement on June 22, 2005, on or about October of 2006, Respondents' insurer and criminal vandalism complaints' against Petitioner' were dismissed. (*Insurance Code §530, §533, Penal Code §594).*

55. On December 12, 2006, Petitioner' in proper, filed a motion to dismiss and quash the service of process and/or to coordinate, Respondents' *above-recited* civil actions (*FSC052747 and FSC026200*). Thereto, *Petitioner'* raised a (*20*) page brief claiming his constitutional and statutory provisional rights involved to *protected* his property from Respondents' variance, nuisance, waste and *violations*, and his right *rights* to *equal protection*

and *enjoy his life* and *property* as *white citizens* within the *community,* Petitioner' also raised his right to *reliance to performance* under Respondents' *oral agreement* with Petitioner *to cut down* their *tortuously* created and maintained nuisances, variances, wastes and *violations* within *Respondents' property. (Superior Court Clerk Records, Judicial Counsel form SC-105).*

56. On or about 1/23/07, Petitioner' served, Respondents' with subpoena for production of documents and witness at trial. (*Superior Court, Clerk Records, form SC-107*).

57. Respondents' on February 7, 2007, dismissed their civil harassment action above-recited, against Petitioner. (*Code of Civil Procedure § 527.6).*

58. On February 14, 2007, Respondents' *denied,* Petitioner' *request* for production of documents, witness and papers, subsequently Petitioner' *moved* the court, for an order for *production.* The Court *denied* Petitioner' motion and proceeded to trial. (*Code of Civil Procedure § 116.520(a)*).

59. On or about February 14, 2007, Petitioner' also *moved* the court to hear Petitioner' motion to *dismiss,* the court also *denied,* Petitioner *motion* and proceeded to trial.

60. At trial, Respondents' as *above-recited within their other actions,* continued to *suppress, alter* and *differently aver* and *state* and *spoliate* Respondent's *oral agreement* with Petitioner' *to cut down* those variances, nuisances, waste and *violations* onto their property and Petitioner'

property, Petitioner' then objected to Respondents' suppressions, spoliations, alterations, misleading averments and statements, thus the court *sanctioned* Petitioner' *objections* and as direct and proximate result, Respondents' obtained judgment against Petitioner' in the amount of ($2,697.64).

61. As direct and proximate result, Petitioner' retained criminal defense counsel John M. Coffer, and appealed. (*Appendix B*).

62. As *above-recited*, and with the *de novo trial*, Respondent Stephen M. Snow, continue to suppress his *oral agreement* of June 22, 2005; thereafter *Mary L. Snow sought* upon *witness Stephen M. Snow,* to suppress and averment other differently thins than those in his *oral averment and agreement* with Petitioner as on *June 22, 2005,* whereas *Stephen M. Snow spoliating the trial averred and stated a differently state of other thins,* than those *on June 22, 2005*, with Petitioner' *to cut down* [t]heir variance, nuisances, waste and violations within the *parties* properties. [6]

[6] ***Appendix B, Pg. 3, L. 15-21: Mr. Snow, well the reason we're here, Your Honor, is because on July 5, 2005, Mr. Rivera came into our front side yard unauthorized, without notice and completely cut down one tree, approximately 35 to 40 feet tall. It fell into our back side yard. He did that without regard to the safety of my wife and daughter, who were at home, who could have walked outside and been injured. ***Appendix B. Pg. 7, L. 11-12: A. Oh, yes. We - - I've trimmed the trees, and Mr. Rivera has trimmed them prior. ***Appendix B. Pg. Pg. 12, L. 18-28: A. I said I didn't know. I said "if you care to cut it, you trimmed before." We both had trimmed the tree, and if he wanted to trim the tree, then feel free. Q. Given your answer just now, you used the words "cut the

63. **Although**, the *above-recited*, misconducts, suppressions, alterations and averments the trial court entered judgment against Petitioner' for *cutting down* Respondents' *violations* on the *parties* property, and *following* the court below judgment, awarded Respondents' 1,000.00 dollars. (*Appendix A; Appendix B, Pg. 47-48*).

64. Upon trial de novo of these issues, the judgment becomes final and regardless of the prejudicial misconducts or bias or prejudice, there are no further rights to motions for consideration, nor for new trial or appeal. (*Code of Civil Procedure, Article 7, commencing with § 116.710, Code of Civil Procedure § 116.780; California Rules of Court, Rule 8.490; Albelleria v. District Court of Appeal (1941) 17 Cal. 2d 280, 290*).

65. **Thus**, Petitioner' in proper, on July 03, 2007, in the Appellate Department of the Superior Court of Solano, County commenced [t]his extraordinary proceedings on writ for certiorari to the Superior Court, thereto raising those constitutional and statutory provisions involved before the Appellate Department. (*Appendix M*). Whereas, the court after finding merits on the writ, ordered oral argument and a hearing on the matter, which was held on September 11, 2007. (*Appendix C*).

tree if you want to cut the tree" and your wife whispered to you "trim the tree;" is that correct. ***Moreover, (*Appendix B, Pg. 6, L. 21*), the plaintiffs', also under oath concedes: There are *(3)* trees' within 10-15 feet of the land uses space. But see the city and developers engineering studies and survey above-recited.

66. On September 11, 2007, upon Petitioner' appearance and without appearances by Respondents' the Court served a denial of the writ upon Petitioner'; then oral argument was held by Petitioner in protections of those constitutional and statutory provisions involved, the court *further denied* Petitioner' Petition for Writ of Certiorari. (*Appendix E*). [7]

67. Petitioner' then within the applicable limitations filed a Petition for Writ of Certiorari in the Court of Appeal First Appellate District, the Court on November 14, 2007, denied, Petitioner' Petition for Writ of Certiorari. (*Appendix F*).

68. Petitioner' then got cut in default within the 10 day's regulatory limitation for review in the Supreme Court. Petitioner' then made an application with an incorporated petition for review to the Court for relief from default the court on the finding the *merits* on the petition *granted* the *application* for *relief* from *default* and order Respondents' to file answer and reply if any.

69. Respondents' answered by an *outsider* person of records, and within their (*Answer to Petition for Review*), sought and differently stated and averred and suppressed their *oral* transfer delegation, proposal and *agreement* with Petitioner *to*

[7] **Petitioner' incorporates all the facts, claims and allegation of this matter as herein presented to the Courts below and thereto claims and alleges that he has truly and lawfully raised his constitutional protected activities in the Courts below. (Appendix B, Appendix E and Appendix M).**

cut down [t]heir' tortuously created and maintained variances, nuisances, waste and *violations* above-recited and in so acting, and *spoliating* the proceeding, averred vandalism.

70. Petitioner' reply to Respondents' differently stated of thins and suppressive averments and spoliations; thus, the Court on January 16, 2008, summarily denied petitioner writ. (*Appendix G and H*).

REASONS FOR GRANTING THE PETITION

Petitioner' claims and realleges and incorporates by reference all paragraphs and provisions above-recited as though the same were fully set forth herein.

Petitioner' claims and alleges that the state court(s) have departed from the accepted and usual course of judicial proceedings, thereto the *Federal Claims Court*, has decided that circumstances such as nuisances adding or detracting from value, under California law, repudiating of history of property can have significant effects on its value. *(Henderler v. United States 38 Fed. Cl. (1997) 611, 616, 625).* [8]

[8] **Hence real property is *"substandard"* when it *"violates"* local or state law, health, safety or building code and it's not in compliance. (*e.g. Rev. Tax. Code § 17274*). Thus, upon information and believe an appraiser ought in his/her agency opinion, that as direct and proximate result of the city engineering studies and surveys finds' only limited land use space between the**

Petitioner' further claims and alleges that the lower courts does abuses their discretion in permitting Respondents' as above-recited to suppress and alter and differently aver and state and spoliate their *oral agreement* at trial and in answer to Petitioner' Petition for writ certiorari and writ of review, proceedings. (*Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At & T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528. 534).*

two properties exist, and that as direct and proximate result Respondent's XYLOSMAS pants, were planted as a decorative shrub and hedges for front side yards within the meaning of the community conditions, covenants and restrictions, in which *would not* as direct and proximate result of *cutting* those within their *community standard will diminish their properties values.* (*2 Miller and Star, Cal. Real Estate (Third Ed), Section 4:65; Soderberg v. McKinney (1996) 44 Cal. App. 4th 1760, 1768).*

In so dully *appraiser of facts*, Petitioner' expert witness *John Lichter* opinion report concedes: There is not enough space for three trees in this portion of the yard, in my experience XYLOSMA are typically planted with the intention that they will be shrubs, as Rivera has on the other side of his property in the side yard., In my experience, XYLOSMA are planted with the intention that they be shrubs. Cutting back the XYLOSMA to three feet will not kill the plant. It would send up many shoots (waters-sprouts) and form dense foliage, and could be maintained as hedge at that poi' t as Mr. Rivera has on the other side of his property in the side yard. The plant would change from more open form to a denser form. (*Appendix J*).

Moreover, the attempt by the litigant Respondent' Mary L. Snow, to persuade witness Stephen M. Snow to suppress and differently state spoliate and aver other thins than those *orally agree on June 22, 2005*, is properly admissible against him/her as indication of his/her own belief that his/her claim is weak or unfounded or false. (*Appendix B. Pg. 12, L. 18-28*). **Accordingly**, when the case presents, *misconduct*, suppression or alteration and spoliations of a material fact, it caries and inference adverse to the proponent of evidence.[9]

Whereas, Petitioner' claims and alleges that the City engineering, studies and surveys, his expert testimony and reports and his evidence of variance, nuisances, waste and *violations* by Respondents' property onto Petitioner' property, and the fact that Petitioner' *never took any other action* than those of his *speech* and *reliance* on Respondent's *oral agreement to cut down* the above-recited variances, nuisances, wastes and *violations*, does further raises a material issue of *misconduct* by the Respondents' within [t]heir trial. (*Appendix B*). **Accordingly,** Petitioner' should be entitle to a fair trial, the credibility of his witnesses, his adduced evidence and his *federal, state and local, constitutional and statutory provisional involved* for the protection of his and the community property values.

[9] **Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At & T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528, 534.**

Thus, Petitioner' claims and alleges that his acts and reliance in protection of his property, appears to be of the very essence of harmony with the underlying principles of ordered due process and liberty—so as to abolish, repudiate and/or allow him to be deprive of those constitutional and statutory provisional rights involved, it is to violate a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental.

Moreover, when Petitioner' under the foregoing, constitutional, statutory and contractual rights to own property, purchased his property in 1992, he was bound by those, federal, state and local rights and duties and the district conditions, covenant and restrictions, in that he owes duty to his community to maintain his property front and side yard shrubs and hedges with in the *(3)* feet height standards and limits, under these constitutional and statutory provisions involved and the community conditions, covenants and restrictions for the full benefits and enjoy his life and property as other members of the community values. [10]

[10] **Compare the community compliance with, (*City of Vacaville Planning Commission, Land Use and Development, standard Section 14.09.074.120. A. 1. b; Appendix K and Appendix* I, Exhibit dated 11/15/03).**

Accordantly, Respondents' shall be equally bound and equally entitle to all those *duties* and *rights* to maintain and enjoy their life and property as other member of the community. In that when a *violation* of those statutory rights occur the *injured party* as herein Petitioner' shall have the *right* as other member of the community to *speak* and to rely on his detriments, impairments and damages and those contractual and constitutional and statutory provisions involved to *give notice* to the *offenders*, herein *Respondents'* for the protection and enjoyment of his life and property as other members of the community property values. [11]

Thus, among all facts, notices, assaults, evasion of arrest, neglect, omissions, abusive speech, anarchies, arrest(s), restraining orders, insurer claims it would be fair to presumed that Respondent' Stephen M. Snow on (*June 22, 2005 on or about 9:45PM*), was *not coincidently* found *adjacent* to Petitioner' *property line*, but that Respondent' was there awaiting for Petitioner' in *reprisal* to Petitioner' May 6, 2005 letter, (*Appendix I*), and through that *aforethought* had no intention of performance under their due process duties, but an

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[11] **Constitutional and statutory provisions involved, thereto included California, West's Ann. Civil Code § 1460, § 1462, § 1465, § 3481, § 3483, § 3479;; Code of Civil Procedure § 731; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Title 42 U. S. C. § 1981, § 1982; See, Board of Regents v. Roth (1972) 408 U.S. 564, 577; Appendixes, I, J, and K).**

intentional and malicious *coercive* tough to *subject* their *oral agreement* upon Petitioner' *to cut down* [t]heir tortuously created and maintained variances, nuisances, waste and *violations* and to *subsequently,* to Petitioner' *reliance* and *performance*, suppress, alter and spoliate their *actions* and *oral agreement* as herein the evidence shows. (*Appendix B*).

Accordingly, there should be no reason why within *our* due process, *constitutional and statutory provisions involved*, any Respondents' or successors in interest to their property, variances, nuisances, waste and *violations*, whom upon *notice* does intentionally continue to *neglect, omit* and in so acting, willfully trespasses and assaults his neighbors and immediate family, shall be able to *evade estoppel by their own acts, conducts and oral agreement* or *evade* the above-recited *inferences* within their own suppressive, averments, spoliations, acts and conducts, and as direct and proximate result *deprive* Petitioner' an his family *economical status* and set a *constructive eviction.*[12]

This, is worthy of importance and compelling reason as to call for the exercise of [t]his court's supervisory powers. (*City of Vacaville Planning*

[12] **In Chapman v. California (1966), this court recognize that harmless-error rules can work very unfair and mischievous result when, for example, highly important and persuasive evidence, or argument, though legally forbidden, finds its way into a trial in which the question of quilt or innocence is a close one. (386 U.S. 22).**

Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal. 4th 1139, 45 Cal. Rptr. 3d. 21,136 P. 3d 821; Code of Civil Procedure §731; Civil Code §1460, §1462, §1465, § 3479, § 3481, § 3483, §1656, § 1657; Board of Regents v. Roth (1972) 408 U.S. 564, 577; Evidence Code § 623; Insurance Code §530, § 533; 42 U.S.C.S §1981, §1982; California Const Art. I, § 1 and § 9; U. S. Const Art. I, § 10, Clause 1; U.S. Constitution Amendments 1, 9, and Amendment 14, Section 1). [13]

Thus, within our due process, a trial judge is a statutory officer, whose authority is limited and defined by statutes. An act in excess of the power conferred by its regulatory, ordinance, statutes or precedents is an act in excess of its jurisdiction or want of its jurisdiction. In that under due process, Petitioner' should be entitle to the creditability of the city engineering studies and surveys and to the creditability of his testimony and his expert witness

[13] **In that freedom of contract is part of liberty protected by due process clause of Fourteenth Amendment, due process clause of Fourteenth Amendment denies to, state any power to restrict or control obligation of contracts executed and to be performed without state, as attempt to exercise power over subject matter not within its constitutional jurisdiction. (Alaska Packers Asso. V. Industrial Acci Com. (1935) 294 U.S. 352, 354, 79 L. Ed. 1044, 55 S. Ct. 518; 7 Witkin Summary of California Law (10thEd) Constitutional Law (c) [361], Pp. 593, 594; Appendix K; Appendix E, Pg. 4-6).**

confirming those engineering studies and surveys and land uses restrictions as credible and adduced trial evidence. (*Appendix I, J, K; Code of Civil Procedure § 116.520(a)).*

Moreover, when a party such as Petitioner' under the governing due process, petition the Appellate Department of the Superior Court of Solano County, for writ of certiorari, he shall have the due process right to "*three panel judges*" and to the concurrence of "*two*" of the department judges for a valid and lawful decision. In so acting the Appellate Department of the Superior Court, Honorable, William C. Harrison shall not arbitrary or capriciously act by *him self* and/or as *solo* judge in this or any case to deny Petitioners the above-recited rights, so as the honorable judge has done in this matter. (*Appendix E; Code of Civil Procedure, Section 77(a), (b), (d), (e), (f) and (g); See, Code of Civil Procedure §85 and § 86; Albelleria v. District Court of Appeal (1941) 17 Cal. 2d. 280, 286-291; Gollaway Crane & Trucking Co. v. Truck Ins. Exch (1977) 67 Cal. App. 3d. 386, 392, 136 Cal. Rptr. 645, quoting Auto Equity Sales, v. Superior Court (1962) 57 Cal. 2d. 450, 455 [20 Cal. Rptr. 321, 369 P. 2d. 937]*).

Accordingly, the "essential creation of appellate jurisdiction" is "that it receives and corrects the proceedings in a cause already instituted". Applying this definition, this high court has concluded that appellate jurisdiction includes review by writ, to review and correct those

proceedings of inferior courts brought for determination in the manner provided by law. [14] **Likewise**, when the petition is brought to enforce or protect those substantial right, and there is no other plain speedy and adequate remedy in the ordinary course of law, he or she is entitle as a matter of right to the writ, or perhaps more correctly, in other words, it would be and abuse of discretion to deny it." (*Powers v. City of Richmond (1995)10 Cal. 4th 86, 92, 113-114, citing Dowell v. Superior Court (1956) 47 Cal. 2d. 483, 486-487, 304 P. 2d. 1009, quoting Potomac Oil Co. v. Dye (1909) 10 Cal. App. 534, 537, 102 P. 677; accord May v. Board of Directors (1949) 34 Cal. 2d. 125, 133-134, 208 P. 2d. 661*). [15]

[14] **Moreover, "when writ of review" is an exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, presented in a formally and procedural sufficient manner, merely because, the court consider the case less worthy of its attention than others matters. (*Answer to Petition for Review, Pp. 7-8; Code of Civil Procedure § 116.780; West's Ann. Code of Civil Procedure § 85 and § 86*).**

[15] **Thus, it shall not be a better interest of justice to *follow* or deny the merits of a petition on a judgment that has thereto *denied* Petitioner' his protected right to enjoyment of life and property as other member of the community and his right for production of witness and evidence and his right of cross-examination examination of witness and to confer evidence, (*Code of Civil Procedure § 116.520(a)*), and thereto *sanction* Petitioner for his *objections*, and admits and receives the respondents herein at issue suppressions and differently averred and stated thins than those that the evidence and facts does provide to the lower courts.**

Therefore, this Court may review and correct the lower Courts denial, impairment, deprivation and sanction of Petitioner' due process rights to speak and protect his property under the federal, state and local regulations and under his covenants, conditions and restriction, and this Court may review and correct the lower Court denial, impairment, deprivation, sanction or repudiation of Petitioner' rights to production of evidence and cross-examine witness and his right to enter in an *oral agreement* and his *reliance* to *performance* thereon within the meaning of the federal and state constitutions and statutory provisions involved, this court can also review and determine the willfulness and intentional coercions, suppressions, alteration and spoliation by Respondents' under their acts, conducts and *oral agreement* on June 22, 2005 on or about 9:45PM. (*Appendix B, Pg, 3-4, Pg. 12, L. 18-28).*

Accordingly, in *Montana Co. v. St. Louis Mining & Milling Co. (1894)*, any measure of proceeding which having sanction of law, provides for temporary invasion of possession of property with least injury and inconvenience, is not obnoxious to charge of not been due process. (*152 U. S. 160, 172, 38 L. Ed. 398, 14 S. Ct. 506*). In that the federal, state and the city of Vacaville have duly provide property protection by notice under those covenants, conditions and restrictions and statutory regulations for protection of Petitioner' and the community at large properties, and so Petitioner' afforded notice to act in a common and civilized forms, and thus he shall not be derived thereof.

Moreover, property interests are not created by the Constitution. Rather, they are created and their dimensions defined by existing rules or understanding that stem from an independent source such as state law—rules or understanding that secure certain benefits and that support claims of entitlement to those benefits. (*Bishop v. Wood (1976) 426 U. S. 341 at 344, (Citing), Board of Regents v. Roth, 408 U.S. 564, 577; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; and covenants conditions, and restrictions, Appendix K).* *** **Accordingly**, within the federal and state constitutional and statutory provisions involved and Petitioner *oral and written notices*, and the Respondents' neglect and omission and their acts to continuing to created and maintained tortuous variances, nuisances, waste and *violations* within their property onto their property and Petitioner property and Respondents' *oral* transfer, delegation and proposal and *agreement* involved, does not take the Respondents' property without due process of law or by vandalism or surprise, simply because, Respondents' so willfully and intentionally and malicious desires to *under oath* suppress, alter, spoliate their *oral* transferred, delegation and *agreement* above-recited. (*O'Neil v. Northern Colorado Irrigation Co. (1916) 242 U. S. 20, 26,61 L. Ed. 123, 37 S. Ct. 7; Southern California Edison Company v. United States (1969) 415 F. 2d. 758; Appendix B, Pg. 3, Pg. L. 15-21, Pg. 12, L. 23-25, Appendix E, Pg. 4-6; Silvertri v. General Motors Corp. (4th Cir 2001) 271 F. 3d. 583, 590; Bihun v. At*

& T Information system, Inc. (1993) 13 Cal. App. 4th 976, 994; Ty Inc. v. Softbelly's Inc. (2003) 353, F, 2d, 528, 534). In that denying Petitioner' his detrimental reliance's and permitting Respondents' too by their means, *under oath* suppress, alter, spoliate and aver and state a different state of thins as on 2001-2003 and through June 22, 2005 and July 5, 2005, is to deprive Petitioner' of the truth in the proceedings and that is to violate a principle of justice so rooted in the traditions and conscience of our people, it is prejudicial error and manifest disregard and impairment of due process of law.

What's more, in so acting Respondents' have also, falsely and maliciously and without reasonable or probable cause portray Petitioner' as sexual offender and so falsely and maliciously have sough upon the Vacaville Police Department and through the District Attorney other arrest(s) and prosecutions against Petitioner' than those herein mentioned and that may or shall be considered, an *oppression* to Petitioner' rights to fear housing and/or an adverse departure from the accepted and usual course of judicial citizens rights to administrative and judicial proceedings, so rooted within our people. *(Penal Code 137(c); Mooney v. Holohan (1935) 294 U.S. 103, 112; 6 Witkin Cal. Procedure (4th Ed) Provisional Remedies, Section (i) [§352], Constitutional protected activities could not provide injunction on protected speech; City of Vacaville Planning Commission, Land Use and Development Regulation, Section 14.09.074. 120. A. 1. b; Big Creek Lumber Co. v. County of Santa Cruz (2006) 38 Cal.*

4th 1139, 45 Cal. Rptr. 3d. 21,136 P. 3d 821; In re Arden and Howe Associated, LTD (1993) 152 B.R. 971, 974-975; Code of Civil Procedure § 731; Civil Code § 1460, § 1462, § 1465, § 3479 § 3481, § 3483, § 1656, § 1657; Title 41 U. S. C. §1981, § 1982; City of Long Beach v. Mansell (1970) 3 Cal. 3d. 462, 488-489; Evidence Code § 623; Insurance Code § 530, § 533; *Auto Equity Sales, v.* Superior Court (1962) 57 Cal. 2d. 450, 455 [20 Cal. Rptr. 321, 369 P. 2d. 937]; *8 Witkin Summary of California Law (10th Ed) Constitutional Law § 1278, §1288; Bradley v. Superior Court (1957) 48 Cal. 2d. 509, 519, 310 P. 2d. 634; California Const Art. I, § 1, and § 9; Colony Hill v. Ghamaty (2006) 143 Cal. App. 4th 1156, 1170, 50 Cal. Rptr 3d 247, 256-257; U. S. Const Art. I, § 10, Clause I; U.S. Constitution Amendments 1, 9, and Amendment 14, Section 1).* In consideration of the foregoing, the judgment (*Appendix B, Pg. 47-48*) lacks due process and evidentiary support, and it carries bias with the lower court judgment and prejudice onto Petitioner' rights.

CONCLUSION

For the foregoing reason, the petition for writ of certiorari should be granted.

Dated: March 13, 2008

Juan Bautista Rivera
Petitioner, In Pro per
1133 Beelard Drive
Vacaville, CA. 95687

Supreme Court, U.S.
FILED
071191 MAR 13 2008
OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Juan Bautista Rivera,

Petitioner,

v.

The Superior Court Of The State Of California In And For The County Of Solano, Real Parties In Interest, Mary L. Snow and Stephen M. Snow

Respondents.

On Petition For Writ of Certiorari To The Superior Court Of The State of California In And For The County Of Solano.

APPENDIXES

Juan Bautista Rivera
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L. Defendant and petitioner removing the plaintiff and Real parties in interest debrief and his objections to the Snow, photo taking

M. Notice of Application for Writ of Certiorari [CCP 1105, 1088] and Petition for Writ of Certiorari, dated Jul. 9, 2007

APPENDIX A

TRIAL DE NOVO JUDGMENT

Filed
Clerk of the Superior Court
May 10, 2007
By Linda G. Ashcraft
Deputy Clerk

In the Superior Court of the State of California in and for the County of Solano
Department Seven

Mary L. Snow and Stephen M. Snow,
Plaintiffs

Vs. Juan Bautista Rivera, Defendant

CASE NO.: FCS029178
Judgment Following Trial de novo
(Small Claims Case No.: FCS52747

The above-entitle matter came on calendar May 4, 2007, for trial de novo. Plaintiffs appeared in proper. Defendant appeared with counsel, John Coffer. Having considered the evidence presented, the Court finds judgment for Plaintiffs in the sum of One Thousand and no/100 dollars ($1,000.00).

Dated: May 8, 2007

This instrument is a correct copy of the original on file in this office

Attest: May 10, 2007
Linda G. Ashcraft, Clerk of the Superior Court of the State of California in and for the County of Solano

Deputy Clerk

Frank R. Taft, Judge of the Superior Court

Judgment following Trial de Novo

APPENDIX B

TRIAL DE NOVO REPORTERS TRANSCRIPTS

COPY

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SOLANO

THE HONORABLE FRANKLIN R. TAFT, JUDGE PRESIDING

--oOo--

MARY L. SNOW,

Plaintiff

Vs. FCS029178

JUAN RIVERA,

Defendant.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DE NOVO

FRIDAY, MAY 4, 2007

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A P P E A R A N C E S

For the Plaintiff: MARY L. SNOW
In Propria Persona

For the Defendant: JOHN COFFER
Attorney at Law

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HOLLY A. ERION, CSR
Official Court Reporter
CSR License No. 12427

MAY 4, 2007

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The above-entitled matter came on regularly this day for TRIAL DE NOVO in the Solano County Courts, State of California, before the Honorable SCOTT L. KAYS, Judge of the Superior Court.

HOLLY A. ERION, CSR, Official Court Reporter, was present and acting.

The following proceedings were had and taken, to wit:

P R O C E E D I N G S

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THE COURT: Snow versus Rivera.

MR. COFFER: John Coffer for the defendant, Mr. Rivera, who is present.

MR. RIVERA: Good morning, Your Honor.

THE COURT: Good morning.

Your name, sir?

MR. SNOW: Steven Snow.

THE COURT: All right.

Mr. Snow, this is what we'll call a trial de novo, which means it is a new trial. I wasn't there for the other trial. I don't know what happened. So, if you want to stand and be sworn.

(Parties sworn)

MR. SNOW: Yes.

MRS. SNOW: Yes.

THE COURT: Is there any objection to the testimony

being taken right at the table?

MR. COFFER: No objection.

MRS. SNOW: No, sir.

THE COURT: All right. You want to tell me what happened?

MR. COFFER: Your Honor, before that happens, we would make a motion to exclude witnesses that may be in the courtroom at this time.

MRS. SNOW: We need our witness, Your Honor. She was there.

THE COURT: No, I am not going to exclude witnesses on this.

MRS. SNOW: Thank you.

THE COURT: Go ahead.

MR. SNOW: Well, the reason we're here, Your Honor, is because on July 5, 2005, Mr. Rivera came into our property, the front side yard, unauthorized, without notice, and completely cut down one tree, approximately 35 to 40 feet tall. It fell into our back side yard. He did that without regard to the safety of my wife and daughter, who were at home, who could have walked outside and been injured.

THE COURT: Were you injured?

MR. SNOW: No. No one was injured, Your Honor. I am just making the point that he did it without notice --

THE COURT: All right.

MR. SNOW: -- and without permission. It was approximately 9:00 in the morning. My wife heard the saw; that's how she knew what was going on. The tree fell on the

side yard. That's where our dog house is. There were certain pieces of furniture out there and some other things.

That, Your Honor, is the reason we're here. And we're seeking damages and I have a breakdown.

THE COURT: One tree, you're talking about?

MR. SNOW: One tree was completely cut down. The other one was butchered, and we had that one removed also.

THE COURT: Okay.

MR. SNOW: I have pictures of all this.

THE COURT: I will see the pictures. What were the damages on this? And what are you claiming the money for?

MR. SNOW: The replacement cost of the trees, which came up to $2,000 apiece for the size of the tree. We were paid --

THE COURT: What happened to the second tree that was butchered?

MR. SNOW: That one was taken down. We had it removed. And we have tree removal and clean-up.

THE COURT: So you had $2,000 per tree?

MR. SNOW: Yes, sir. I have the complete breakdown here, if you care to see it.

(Document handed to the Court).

MR. SNOW: There's receipts also.

THE COURT: Is this an estimate or money that was actually paid?

MR. SNOW: Estimates. And there are monies actually paid, which are denoted in there also and deducted. The monies we were paid by State Farm, our insurance company,

those in parentheses, are the ones that were deducted, Your Honor, that were already paid to us. I do have receipts also.

THE COURT: I am trying to figure out what you have got here. You've got two trees for $4,310; is that right?

MRS. SNOW: Yes. The 310, Your Honor, is --

THE COURT: And State Farm reimburses you $500 per tree?

MR. SNOW: Yes.

THE COURT: So that's minus $1,000, right?

MR. SNOW: Mm-hm.

THE COURT: Then you have the clean-up, which State Farm reimbursed you; stump grinding of $100.

What's the deal with the fence? Was it destroyed?

MR. SNOW: No, Your Honor. We put up a new side fence to further keep Mr. Rivera on his own property. This isn't the first incident we had.

THE COURT: He's the next-door neighbor?

MR. SNOW: Yes, he is, Your Honor. I did that after the fact to further separate our properties so he knew clearly where his property was and ours began.

THE COURT: Anything else?

MR. SNOW: No.

THE COURT: Okay.

Mr. Coffer, do you have questions?

MR. COFFER: I do, Your Honor, thank you.

CROSS-EXAMINATION

BY MR. COFFER:

Q. Mr. Snow, you moved into your property in 2002 or

2003?

A. 2001.

THE COURT: 2001. You remember what month that was?

MR. SNOW: We moved in --

MRS. SNOW: December 15th.

MR. COFFER:

Q. Do you remember the date?

A. I know it was mid-December. I, myself, don't remember the exact date.

Q. Of 2001?

A. Yes.

Q. You remember that in that side yard that separates your home from Mr. Rivera's home, there were three trees when you moved in; is that correct?

A. That I don't remember.

Q. You remember -- excuse me. We can just talk with Mr. Snow. Do you remember there being an oak tree?

A. Well, yes, there was an oak tree and two other trees.

Q. The two trees that were cut down were very close to the other tree; is that correct?

A. They were within 10, 15 feet.

Q. Again, the side yard; is that correct?

A. Mm-hm.

Q. Is that "yes"?

A. Yes.

MR. COFFER: Could we have a couple pictures marked, Your Honor?

THE COURT: Sure.

MR. COFFER: Thank you.

THE COURT: As soon as my clerk gets back.

MRS. SNOW: Excuse me, Your Honor. Can I have the right to talk?

THE COURT: No.

MR. COFFER:

Q. While the clerk is coming back, you recall that after you moved in, Mr. Rivera came and approached you about possibly trimming those two trees, is that correct, that you described?

A. Oh, yes. We -- I've trimmed the trees, and Mr. Rivera has trimmed them prior.

Q. Do you recall how many occasions Mr. Rivera came to you after you moved in December 2001 to trim those trees so they didn't hang on his property and on his roof?

A. I remember two times that he asked me to trim them.

Q. Did you trim them, as best you can recall, in response to his request?

A. I did the first time.

Q. And the second time he requested, you did not?

A. I did not. If you are referring to the time that precipitated this action, I did not trim the trees. I told Mr. Rivera that if he was worried about it, he could go ahead and trim the trees, and as the law provides for, he can trim that up to the edge of his property line.

Q. When he had asked you permission or requested of you that you trim the tree the second time, your recollection is that you didn't do it; is that correct?

A. That's correct.

Q. Thereafter, Mr. Rivera sent you a letter by mail asking you to please trim your tree; isn't that correct?

A. He did send a letter.

MR. COFFER: If I could have those exhibits marked, Your Honor, if I may approach the clerk?

THE COURT: All right.

MR. COFFER: I got a series of documents. I am showing them -- if you want to look at them, Mr. Snow, the documents I am about to have marked, the photographs.

MRS. SNOW: What do those pertain to? What's going on now?

THE COURT: Can you hold on a minute? You know, there's a way we conduct this trial. That doesn't mean you interrupt people.

MR. COFFER: I am showing them to you to look at, at this point, Mr. Snow.

MR. SNOW: Okay.

THE COURT: Let him read it.

MR. COFFER: Sure.

MR. SNOW: Oh, I remember this, yes. This, I haven't seen.

THE CLERK: This will be Defendant's A.

MR. COFFER: If we could do each one individually, that's my request; just so it will be clear which item we're referring to.

THE CLERK: Okay. These are Defense Exhibits A through I for identification.

MR. COFFER: Thank you.

Q. Mr. Snow, just so the record is clear, when you moved in, in December '01, that was into 1127 Beelard Drive in Vacaville?

A. Yes.

Q. To your knowledge, Mr. Rivera lives at 1133 Beelard Drive, also in Vacaville, your immediate neighbor?

A. Yes.

Q. You share a property line?

A. Yes.

Q. And at this time, in July of 2005, you talked about the three trees that existed in your side yard next to Mr. Rivera's home, true?

A. Yes.

Q. You told us that when one of the trees was cut, apparently, a branch fell on your fence; is that true?

A. Mm-hm. No. The whole tree fell across the fence.

Q. Showing you what's marked as Defendant's E for identification, does that show that limb that has fallen onto the fence?

A. Yes, it does, right here.

Q. All right. Where, clearly, there's a branch sticking above the fence?

A. No, that's the tree. It is not a branch. It is the entire tree, as can you see from my pictures there, that fell into the back side yard.

Q. Part of the tree that fell into your yard, it hit the fence?

A. Yes, it did.

Q. Showing you what is marked as Defendant's F for identification, it shows the fence still unrepaired; is that correct?

A. Yeah.

Q. There's a board there that's not repaired that was the board that the tree, as you described, fell onto on July 5, 2005; is that correct?

A. It fell over, yes.

Q. So, the fence that separates your yard has not been repaired since July of '05?

A. No, I haven't repaired that board.

Q. You also referred this matter to your insurance company; is that correct?

A. Yes, we did.

Q. And they paid you a sum of money for the damage to your tree?

A. Yes, as we deducted off our request for damages, yes.

Q. And I would like to show you Defendant's I, see whether or not you recognize it. That exhibit appears to be from your insurance company. If you can confirm that, I'd ask you to do so.

A. Well, State Farm is our insurance company.

Q. Well, let me ask you this then: If you can't recognize that, in particular, I would ask you if you were in fact paid by your insurance company $2,011.37?

A. That may have been the total. We didn't receive it all in lump sum.

THE COURT: What was that again?

MR. COFFER: $2,011.

THE COURT: Is that what they paid?

MR. COFFER: It's what State Farm paid the Snows, $2,011.37.

MR. SNOW: Your Honor, part of the --

THE COURT: Wait a minute. You're answering questions now.

MR. SNOW: Oh. I'm sorry.

MR. COFFER:

Q. You also told -- I think you received a letter from Mr. Rivera; is that correct?

A. Yes.

Q. I would like to show you what's been marked as Defendant's G for identification. Do you recognize that exhibit?

A. I recognize this letter.

Q. And that was the letter Mr. Rivera sent to you in May of 2005; is that correct?

A. That's correct.

Q. And between May 6, 2005, when this letter is dated, and July 5th of 2005, you took no action to try to trim that tree; is that correct?

A. I don't know if I didn't between that time. I do not think that I did. That was just one of many things that Mr. Rivera had been complaining about.

Q. So, the best of your recollection is you didn't trim your tree after receiving that letter?

A. No, I didn't.

Q. All right. The -- excuse me. Some time after receiving the letter marked as Defendant's G, Mr. Rivera approached you personally and asked you whether you had received the letter, correct?

A. Mm-hm.

Q. Is that "yes"?

A. Yes, he did.

Q. And then he asked you whether or not you would in fact trim your tree so it would no longer create a danger to his property?

A. Yes.

Q. Then he asked you when would you be able to trim the tree?

A. He asked me when. I said I didn't know.

Q. Did you thereafter say "If you would like to, you can go ahead and trim the tree"?

A. No. Well, my more precise answer would be that I said that I would cut it. He wanted to know when. I said I didn't know. I said "If you care to cut it, you've trimmed before." We both had trimmed the tree, and if he wanted to trim the tree, then feel free.

Q. [redacted] to you "trim the tree;" is that correct?

MRS. SNOW: I didn't say anything.

THE COURT: I am going to ask you to go outside if you can't be quiet.

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MR. SNOW: Mr. Rivera was not given permission to cut the tree down ever, at any time. It was never inferred, ever.

MR. COFFER:

Q. You told Mr. Rivera he could cut the tree if he would like to do so?

A. I told him he could trim the tree, as stated.

Q. Did you give him any limitations, say, exactly what you wanted him to do?

A. No. But California law does.

Q. I am asking you whether or not you told him.

A. No, I left that to common sense. I said "trim."

Q. Did Mr. Rivera tell you in your earlier conversations that those plants that he wanted to cut or have you cut were not trees, but were in fact shrubs that had been planted?

A. No. When I got -- they are 25 feet tall. I am not a tree expert, but 25 feet tall trees --

Q. You don't know what condition they were kept in previous to your moving in; is that correct?

A. No.

Q. You're also aware you signed an agreement with your insurance company to let them stand in your place in any future lawsuits against Mr. Rivera, that is, a claim of subrogation you signed to State Farm; is that correct?

A. I don't know. I don't remember.

Q. Let me show you what's been marked as Defendant's H for identification, a letter from, I believe, the law firm representing State Farm.

A. As far as I understand, that's for them to get whatever claims they paid out to us.

Q. Did you sign a letter of subrogation?

A. I do not remember if I did or not.

MR. COFFER: Thank you, Mr. Snow. No further questions at this point.

THE COURT: Mr. Snow, do you have any other witnesses?

MR. SNOW: My wife, Mary.

THE COURT: Is this testimony just cumulative, you already told me, or something new?

MR. SNOW: Uh, she was there. She saw Mr. Rivera cut the trees down. She's also aware of the numerous other things that have been going on prior.

THE COURT: Okay. The prior things, I am not concerned with. I am concerned with the damages done in cutting the trees down.

MR. SNOW: Okay. That's just what we're looking at then, right here.

THE COURT: Yes.

MR. SNOW: Okay. Yeah, she did witness the trees being cut down, Your Honor.

THE COURT: What would you like to tell me, ma'am?

MRS. SNOW: Yes, Your Honor. I was there that morning. Mr. Rivera came over there with a chain saw, and I heard the two cuts and I jumped up to look out, and as I looked out the window, the 30-foot tree was coming down, because our bedroom is right there in the side yard, and I ran out front.

Mr. Rivera is standing there with a chain saw. And I said, "What is wrong with you? Why can't you leave us alone?" And he pointed at me. We have pictures. He said, "It's your fault. It's your fault. It's your fault."

This has been ongoing since we moved in. The letter you have from him, it not only says "branches" but "roots." It says "gravel." We have a police report. He turned us in for our courtyard.

MR. COFFER: Objection.

THE COURT: I will sustain that, impose my own objection.

MRS. SNOW: I was there, Your Honor, for when he cut the trees down. And I also have a witness that I went in and got, and she was there when the police went to the front door. We have the police report. He was arrested. He stated -- he said he was allowed to trim the trees, but he decided to cut them down.

MR. SNOW: And you actually have that as part of Mr. Coffer's exhibit, Your Honor.

THE COURT: Let me see it.

MR. SNOW: It's part of that page --

MR. COFFER: If I can see it?

MR. SNOW: -- that were stapled together.

MRS. SNOW: And I have a witness that was there when the three police officers came over and stated that, Your Honor, and I said, "Why can't do you something?" He said, "Well, you can have him arrested. Do you want to?" And I said, "Yes, I do." Then we got a restraining order for

17 months, Your Honor, and we dropped the restraining order.

MR. COFFER: I don't know what that document has that's relevant. We would object to it as hearsay.

MR. SNOW: It's already in with the stuff Mr. Coffer provided, although it is a smaller copy.

MR. COFFER: It is actually not in the information.

MRS. SNOW: He admitted to it then. It says "trees," Your Honor. It doesn't say "branches."

MR. COFFER: This is not in quotations. This is a summary written by somebody else, and I don't know who that other person was.

MRS. SNOW: It is a police officer. And I do have a witness, Your Honor, who was there for the whole thing.

THE COURT: Wait a minute.

Mr. Coffer, do you have questions to ask Ms. Snow?

CROSS-EXAMINATION

BY MR. COFFER:

Q. When you saw Mr. Rivera, he had a ladder out, I take it; is that your understanding?

A. No, he did not have a ladder out.

Q. He had a chain saw?

A. Yes.

Q. By the time you noticed anything going on, one of the trees had already been dropped; is that correct?

A. Sir, I was upstairs in my bedroom, looking out the window. The tree came down. Mr. Rivera -- I could see him after, because the tree is lower than the fence. He cut it right down. There's just a little stump left. And I am

standing there, and I saw him with the chain saw. I ran down. I confronted him. He tried to run into the garage.

Q. So would your answer be "yes," you saw him cut down the tree?

A. Yes, sir.

MR. COFFER: All right. Thank you. No further questions.

THE COURT: Okay. You said you had another witness?

MRS. SNOW: Yes, sir.

MR. SNOW: Shaunna, our neighbor. She came over immediately after.

(Witness sworn).

THE WITNESS: Yes, I will.

THE CLERK: Please state and spell your name.

THE WITNESS: Shaunna Wouda, S-H-A-U-N-N-A, W-O-U-D-A.

THE CLERK: Thank you. Did you want her to the witness stand, Your Honor?

THE COURT: Yeah. Maybe you better come up here on the witness stand. Miss Wouda, what do you know about this incident?

THE WITNESS: Um, the date was July 5th, I believe. I don't recall that. Mrs. Snow came running to my door in tears, saying that her neighbor cut her trees down.

MR. COFFER: Objection, hearsay.

THE WITNESS: Pardon me?

MR. COFFER: I am going to object as hearsay, Your Honor, to what Mrs. Snow told Mrs. Wouda.

THE COURT: Okay. You can step down.

THE WITNESS: One more thing. May I? The height, again, is kind of a funny thing, and I heard Mr. Coffer say something about a shrub. You know, shrubs are trees. They were trees, sir. They have stumps.

THE COURT: I have the pictures.

THE WITNESS: Right. And it was cut down approximately, I don't know, four to five feet because it was below the fence line. And I am 5'8", so somewhere between that area, they were just cut off right across the trunk of the tree. So ...

THE COURT: Okay. Have a seat.

THE WITNESS: Okay.

THE COURT: Mr. Coffer?

MR. COFFER: Your Honor, thank you. I would have Mr. Rivera testify. He's been sworn? I am not sure if he was or not.

THE CLERK: No, he was not.

(Witness sworn).

MR. RIVERA: I do.

THE COURT: State your name for the record.

MR. RIVERA: Juan Bautista, B-A-U-T-I-S-T-A, Rivera.

DIRECT EXAMINATION

BY MR. COFFER:

Q. Mr. Rivera, do you live at 1133 Beelard Drive in Vacaville?

A. Yes, yes, sir.

Q. Would you tell the, judge, please when you moved

THE COURT: Well, I will receive it, not for any evidentiary.

THE WITNESS: Okay. So, Mrs. Snow was at my door. I opened the door. She was very emotional, said that her neighbor next door cut her trees down, did I have a camera, could I please help her. So I grabbed my little son. I ran across the street with Mrs. Snow, waited for the police to arrive. We took pictures of the various damaged trees, et cetera The police showed up.

THE COURT: Are these those pictures?

THE WITNESS: I don't know, sir. I haven't seen them. Most of these, I took. A couple of these, I did not take. I did not take the one of Mr. Rivera.

THE COURT: Okay.

THE WITNESS: I did not take these couple myself. Um, so, again, we waited for the police to come. An officer came and spoke with Mrs. Snow and myself and waited for, I guess, another officer to approach his door. They went over, talked to Mr. Rivera, and said -- asked him the questions about the tree, et cetera, and he said he did cut the tree down. The officer came back, told us that -- asked Mrs. Snow if she would like to do -- I want to say a citizen's arrest, something to that effect. She said yes. They had another officer or community person come over. I believe they took pictures as well. And that's pretty much what happened that day. It's as it is; the trees were cut down.

THE COURT: Okay. Mr. Coffer?

MR. COFFER: No questions.

into that address?

A. Um, August 1992.

Q. When you moved in, the neighbor immediately to your -- I believe the south -- but where the Snows now live, at 1127 Beelard Drive, another couple lived there; is that true?

A. Yes, the Neilsons.

Q. Is that right?

A. Yes.

Q. In the side yard between your yard and the Neilsons at 1127 Beelard Drive, they had an oak tree; is that true?

A. Correct.

Q. That has been shown in the photographs already discussed?

A. Yes.

Q. In addition to that oak tree, there were other plants also in the approximate location?

A. Yes. On the front yard of my side, we have what they call yellow.

Q. I am not asking what is on your side. I'm sorry, my mistake. I meant on the side where the Neilsons lived.

A. Yes, there was two xylosmas to divide the property.

Q. You described them as xylosmas; is that correct?

A. Yes, correct.

Q. When the Neilsons lived there, were they initially maintained as shrubs or low standing bushes?

A. Correct.

Q. Do you have the similar kind of xylosma plants in your yard?

A. Yes, I do.

Q. Were they planted both in the Neilsons' yard and in your yard by the developer of that tract?

A. Mine -- according to the designs, mine are planted on the north side of the property.

Q. Right. Was it the developer who had planted the trees at 1127 Beelard Drive at that time, the home of the Neilsons?

A. Yes.

Q. And for a period of time, the Neilsons maintained those plants as shrubs; is that true?

A. That's correct.

Q. Sometime thereafter, after 1992, did the Neilsons begin to neglect those plants?

A. Yes.

Q. Did they begin to grow freely or wildly?

A. Yes.

Q. Did they grow into what might be called tall trees?

A. Yes.

Q. Do you recall when the Neilsons moved out, as best you can recall?

A. Um, they got into some divorce, from what I heard from Mr. Snow, in 2001. So they got in a divorce, I'd say 1998 or somewhere in there. I am not sure. And the whole thing continued on.

Q. Your best recollection is, or at least it's fair to say, that in December of 2001, Mr. Snow has testified they came to live at 1127 Beelard; is that true?

A. Yes.

Q. All right. At that time it was almost ten years after you had moved into that home, and it was a new home when you moved in, correct?

A. Yes, it was.

Q. After ten years, those xylosmas were starting to intrude onto your property; is that correct?

A. Yes.

Q. And their roots were intruding into your property, true?

A. Yes, and the oak tree roots.

Q. Was that causing damage to your sprinkler system in your front yard?

A. Yes.

Q. Were the xylosmas also encroaching onto the roof area of your home?

A. Yes. And they were clogging the gutters and the drain system for the water when it rains. The storm drain system and the gutters, they were clogging them up.

Q. Do you recall then at some time asking Mr. Snow to please trim the xylosmas so it wouldn't intrude into your yard?

A. Yes.

Q. Did you do so in a polite way?

A. Yes, I did.

Q. Do you recall the first time that you mentioned this to Mr. Snow, being in the April to June 2003 time period?

A. Yes, somewhere in that time period.

Q. Did Mr. Snow respond to your request to please

trim --

A. He said at the time he would take care of it. That was good enough for me.

Q. At that time you were satisfied with that answer?

A. Yes, I was.

Q. Did you ever see Mr. Snow trim those trees as they pertain to your side of the fence?

A. No.

Q. Did you approach Mr. Snow another time in September of 2003, 35 months after your first request to again ask him to please trim his trees?

A. Yes.

Q. What was Mr. Snow's response at that time?

A. The second time that I approached, I believe it was Mrs. Snow I approached the second time, when she was with daughter. Her response was that --

Q. It was not a favorable response?

A. No.

Q. Were you polite in your request to please trim the trees that were intruding into your side yard?

A. Yes. After I spoke to Mrs. Snow, I spoke to Mr. Snow, and the response wasn't favorable.

Q. Thereafter, did you send a letter to the Snows?

A. Yes, I did.

Q. Would that have been in May of 2005?

A. Yes.

Q. So, approximately 20 months you had waited, and in that 20 months, no action was taken by the Snows to trim those

xylosmas?

A. No action whatsoever.

Q. Now I am showing you what has been marked Defendant's G for identification, what appears to be a letter signed by you; is that correct?

A. Yes.

Q. That letter is dated May 6th of 2005, correct?

A. Yes.

Q. Was that the date that you sent a letter to the Snow family?

A. I believe that was the date, yes, sir.

Q. Thereafter, did you notice whether Mr or Mrs. Snow had taken any action to trim the trees?

A. No. They did not take any action to correct the situation.

Q. Do you recall running into Mr. Snow, say, June 22nd of 2005, a little over a month after you had sent the letter to ask him whether he would trim those trees?

A. Yes.

Q. Did Mr. Snow respond in any way?

A. Yes.

Q. What did he tell you?

A. Mr. Snow was by the house when I got home that evening, and I asked him if he had received the letter. I said, "Good evening, Mr. Snow." I asked him if he received the letter. He said yes, he received the letter. He wanted to know "What about the letter?" And I said, "Well, I would like to know what would you like to do with this situation

that we have here, and someday I would eventually take care of it," or that -- something to that effect, if he would. He wanted to know if I would, and my reply is I would like to know when, since it's been going on a long time and the gutters and drain system continued getting clogged. When I replied to him I would like to know when, he proposed to me -- suggested to me that I cut them down. And I told him "thank you." I went inside. That was the end of conversation.

Q. Did you thereafter make some arrangements yourself to trim them back?

A. Yes.

Q. What was your intention at that point?

A. According to the developers, the hedges that we have, including my side, which I have the same plan. So, having had his permission to cut them down, I prepared myself with the equipment I needed, the chain saw, the ladder, the extension, the gasoline, to the extent I needed to bring it down to this standard that we have in the neighborhood.

Q. Did you make any secret of what you were preparing to do, bringing out the ladder, chain saw, et cetera?

A. No. My garage door was open. I needed to have it open to get my ladder out.

Q. This was in broad daylight?

A. Yeah. It started about 8:10 in the morning.

Q. You believe you had permission to return these to their original form as shrubs or bushes?

A. Yes. I believe I had permission to not cut them down to stumps, but to bring it up to what we have, to the regular

hedges that we have.

Q. And showing you what's been marked as Defendant's C, that's a photograph of the same kind of plant in your yard?

A. Yes.

Q. There, they are maintained at about three and a half, four feet; is that true?

A. Yes.

Q. While you were trimming the trees, one or a branch of that tree fell over onto the fence of the Snows?

A. That's correct.

Q. And is that shown in Defendant's E for identification?

A. Yes.

Q. It shows both the tree falling into the yard, the line against the fence?

A. Yes.

Q. When that happened, it broke a board, a plank in the fence?

A. Yes, sir.

Q. Has that plank been repaired?

A. No, it has not.

Q. Showing you what is marked as Defendant's F for identification, do you know when that was taken?

A. Yesterday, about 8:00 a.m.

Q. It shows the same condition it was in after you cut the tree in July of 2005?

A. That's correct.

Q. And that is shown again in Defendant's A and in

Defendant's B, is that true, those two photographs?

A. Yes.

Q. All right. Thank you. When you trimmed it, that first tree fell on to the fence. There was a second tree; is that correct?

A. That's correct.

Q. And you had began to trim that tree as well?

A. Yes.

Q. That is when Mrs. Snow, as she described, came out into the yard and complained?

A. Yes.

Q. Then you stopped what you were doing?

A. I stopped what I was doing.

Q. Thereafter, somebody employed by the Snows, to the best of your recollection, came out and removed the trees or cut them down to stumps?

A. Yes, I had counted to three to five feet high, and the person that they hired took them down all the way to the stumps.

Q. As shown in Defendant's D?

A. That's correct.

Q. Now, the same day July 5, 2005, the police came out to your home, correct?

A. Yes, correct.

Q. As the Snows have described, they cited you for vandalism; is that true?

A. That's correct.

Q. Violation of Penal Code section 594?

A. Yes.

Q. That charge was later dismissed by the Solano County District Attorney's Office?

A. Correct.

Q. Did you not pay as part, of that dismissal, any type of restitution at all; isn't that also true?

A. That's correct.

Q. There was a complete dismissal?

A. Yes.

Q. There was, as the Snows have described, a restraining order, but that was dropped as well?

A. That's correct.

Q. After you cut down the tree in July, you were contacted by the insurance company and a law firm who represented the insurance company saying they were now standing in place of the Snows, threatening to sue you to reclaim the money they had paid out to the Snows?

A. That's correct.

Q. And the insurance company sent you a letter, specifically, that's been marked as Defendant's H, telling you that they now stood in the place of the Snows for litigation purposes?

A. Yes, they sent me this letter.

Q. And also, what's been marked as Defendant's A, this was actually sent to your previous attorney, but it shows the itemization of the claims made by the Snows to their insurance company, State Farm?

A. That's correct. I have reviewed this.

Q. Obviously, when you cut down the tree, or you believe were given permission to cut back the tree, you understand there was a standard of reasonableness in what you were doing, didn't you?

A. Yes.

Q. Did you believe what you were doing was reasonable?

A. Yes, I believe it was.

Q. It was your intention only to return the xylosma to its reasonable state?

A. In comparison to what we have in the neighborhood hedges.

Q. It's a tracted area?

A. Yes.

Q. The developer planted a ton of xylosma plants throughout the development?

A. Correct.

Q. And throughout the development, those are maintained by the owners of the homes as bushes/shrubs?

A. Yes.

MR. COFFER: Thank you, Mr. Rivera. No further questions.

THE COURT: Any questions you want to ask?

MR. SNOW: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. SNOW:

Q. Mr. Rivera, do you have any pictures of the trees invading or laying on the roof of your house? Do you have anything like that, that shows that?

A. There is a picture as of May of --

Q. Do you have that here?

A. I am not sure.

Q. Do you have any receipts for any damages caused by my roots, anything like that?

A. Sir, usually, as you know, being my neighbor, you know I maintain my property myself.

Q. Well, then you have receipts for the damages for the irrigation that was broken or damaged by these roots?

A. If you were to be at my house, I have --

Q. So you don't have them?

MR. COFFER: I would ask my client be allowed to answer the question.

THE COURT: He can answer.

MR. RIVERA: Yeah, I don't have any receipts with me, just the materials I purchased in order to fix the sprinkler heads.

MR. SNOW:

Q. And you said that you maintain your bushes to the neighborhood's standard, and you showed us a picture here as an example of how you keep your property. What side of the property is that on here?

MR. COFFER: I think it is shown in Defendant's C.

MR. SNOW: No, I mean what side is that? The north side?

MR. COFFER: North side.

MR. SNOW:

Q. Well, um, that's the north side also, isn't it, of

your property?

I would like to show Your Honor the same picture.

Is that the north side, Mr. Rivera?

THE COURT: Hold it up and I can look at it.

MR. SNOW: Well, I don't know if you have that one, Your Honor, these two. That, Your Honor, is the north side of Mr. Rivera's property.

MR. RIVERA: That's the front yard.

MR. SNOW:

Q. Yes, it is, isn't it?

A. This is the back yard.

MR. SNOW: That's in the back yard.

Can you see? There's a big difference. It is hard to tell where the lady next door to Mr. Rivera and Mr. Rivera's property stops.

THE COURT: Well, it's the time to ask questions.

MR. SNOW:

Q. You don't have any receipts?

A. Can I see the pictures?

Q. Do you have any pictures of the roots that were coming in?

A. I believe Mrs. Snow has pictures of roots.

Q. Would that be the root after I cut it?

A. After I cut it.

Q. After I did?

A. After I cut it. Yeah, that's the root that I cut.

THE COURT: Can I see that?

(Document handed to the Court).

MR. SNOW: Your Honor, I don't have any more questions for Mr. Rivera.

THE COURT: Mr. Coffer, any other witnesses?

MR. COFFER: Just a follow-up with those questions, quickly.

FURTHER DIRECT EXAMINATION

BY MR. COFFER:

Q. Mr. Rivera, as to the roots, your recollection is that in fact you were the one who corrected the damage caused to your sprinkler system?

A. Yes. That picture there was taken sometime in November of 2003. Mrs. Snow called the police on that particular issue.

Q. At any rate, did you correct the damage?

A. That's when I fixed the sprinkler heads, cut the roots off.

Q. Showing you what's been marked as -- looks like Petitioner's 37 -- you recognize what's shown in that two photographs?

A. Yes, I do.

Q. Describe that for the Court, please.

A. On the left side, my front yard, there is some type of Russian tree. I had a beautiful tree blown by the wind, broken down, so I replaced it. On the north side, is the home of my other neighbor. We have the cherry plum trees and we have -- she has one and I have two. That's what we see on this picture here. That's our front yard of the trees that are planted on my north-side neighbor.

Q. And showing you Petitioner's 29, do you recognize what is shown in that photograph?

A. Yes. This here, it shows the inner portion of Mrs. Hummer and myself, the north side. Bottom picture shows my front yard cherry plum trees, which are planted by the developers. In there on the right side, kind of hard to tell, but there was some type of hedge that Mrs. Hummer had let grown, which she had taken off those pictures -- she had taken all out.

MR. COFFER: Thank you. No further questions of Mr. Rivera.

MR. SNOW: I have one more question for Mr. Rivera Your Honor.

FURTHER CROSS-EXAMINATION

BY MR. SNOW:

Q. Do you ever get leaves in your gutters on that side of the house? It looks like the trees are pretty tall, but I can't even see --

THE COURT: Well, wait a minute. Do you have a question?

MR. SNOW: Yeah.

Q. I would like to know if he's getting leaves in the gutters on that side?

A. On that side, they were not tall enough to reach the gutter system.

MR. SNOW: They certainly look tall enough.

Your Honor, we -- I don't have any more questions.

MR. COFFER: No more questions. I do have another

witness, though.

THE COURT: Okay.

MR. COFFER: John Lichter.

(Witness sworn).

THE WITNESS: I do.

THE CLERK: State your full name for the record.

THE WITNESS: John Martin Lichter, L-I-C-H-T-E-R.

DIRECT EXAMINATION

BY MR. COFFER:

Q. Mr. Lichter, would you tell the Court what you do for a living?

A. Consulting arborist.

Q. How long have you been employed in that profession?

A. I am self employed, and I have had my own business since 1993.

Q. Prior to beginning that business, did you have to undergo some type of training or educational background?

A. I didn't have to, but I did. I have a bachelors in Plant Science, a masters in Horticulture. I am a registered consulting arborist and a board certified master arborist as well as a certified arborist.

Q. Have you testified previously in a court of law as a master arborist?

A. Yes, I have.

Q. Approximately, how many occasions can you recall?

A. Well, I became a master arborist about a year ago, so as an arborist, I testified perhaps seven or eight times.

MR. COFFER: Your Honor, I would offer Mr. Lichter

as an expert in the area of trees.

THE COURT: All right.

MR. COFFER:

Q. Mr. Lichter, were you asked by me to review some information regarding some plants that were located, apparently, at 1127 Beelard Drive, city of Vacaville?

A. Yes, I was.

Q. Did you see an oak tree, for example, in that same area?

A. Yes, I did.

Q. The other plants, were you able to identify them based on the photographs that you saw?

A. The plants that bind the oak tree?

Q. Yes. I think we all agree they were cut sometime ago.

A. Yes. Those were Chinese xylosma.

Q. Is there a way -- what is the typical way in which a homeowner would use a plant like that?

A. In most cases, they are used as a large shrub.

Q. When you say "large," approximately what size would they ordinarily reach if they're maintained as shrubs? Is there a way of giving us as idea?

A. I think it really depends on how they're maintained. I have seen them anywhere from about three feet high to a very large shrub up to 15 or 20 feet high.

Q. If the shrub isn't maintained as a bush or shrub, it will simply continue to grow?

A. That's correct.

Q. So, it will begin to take on the appearance of a tree, like the oak tree, true?

A. Yes.

Q. Based on photographs, at least one of those xylosmas, did it appear to you it had grown into a tree?

A. Yes. Both had single trunks and were, I would consider, trees.

Q. Showing you what's been marked as Defendant's E for identification, does that appear to be the photograph you described of that, apparently, second xylosma?

A. Yes, that is one of the xylosma.

Q. It's now in the shape of a tree; is that true?

A. Yes.

Q. Grown up, exceeding 15 feet; would you agree?

A. Yes, I would.

Q. If an individual was to cut that, what now appears to be a tree, down to a trunk of four or five feet tall, would that plant continue to live?

A. Yes, it would.

Q. Could it then be maintained as a shrub?

A. Yes, it could.

Q. Could you also, if you wanted to, a tree trunk to grow again into a tree?

A. You could.

THE COURT: How long would it take for this four-foot stump to grow into a tree of about 20 feet?

THE WITNESS: It's going to vary, so I would say one could expect anywhere from two to four feet of growth a year.

So, if it was cut to four feet, then to 20, it would be several years, uh, somewhere between four and eight years, maybe. Yeah, four and six, somewhere in there.

MR. COFFER:

Q. As part of your work as an arborist, do you sometimes try to reach values as to plants or trees that are damaged?

A. Yes, I do.

Q. Did you attempt to do that in this particular case?

A. Yes, I did.

Q. Did you do you that independently, without any outside suggestions on how you might calculate that amount?

A. Yes.

Q. How -- if you can break it down for the judge, how do you arrive at such a figure?

A. There are different methods for appraising the value of trees. There's a standard method that arborists use based on what's called the Guide for Plant Appraisal. There's a ninth edition now, the latest authored by the tree and landscape appraisers. In this case, I used what's called a trunk formula method, a depreciated cost approach to plant appraisal, which looks at the -- first, it looks at the cost, the installed cost, of the largest available transplantable tree commonly available, which, in this case, would be a 24-inch box. And then because the tree is larger than that, that tree that was cut, or trees that were cut, there's an additional value above and beyond that that's calculated based on the side of the tree, and then it's adjusted by the condition, location, and the species of tree, and that some of

that information is based on a regional committee. It's a little complicated.

THE COURT: It sounds that way.

MR. COFFER:

Q. At any rate, after you were working the formula, were you able to come to a value that you would consider be to the maximum value to cut those?

A. Yes.

Q. What was that value?

A. $470 each.

Q. Aside from what -- and that value has nothing to do with the damage to the property value if a person wanted to sell that home, necessarily, would it?

A. Typically, we're -- as appraisers, we're supposed to consider -- do a reasonableness test. If, for example, there were several very large mature oak trees on a property and the value came out to be $100,000 for the trees that were removed, we might want to consider the total property value because landscape is not often constituted. I mean, studies have shown they constitute perhaps up to 20 percent of the total value of the property, so as a reasonableness test, we would look at that.

But not being -- I mean, another approach would be looking at the market approach, getting a real estate appraiser to look at the value of the property before or with the trees and without the trees.

Q. And that's not your expertise?

A. No, it is not.

Q. As an aside to what theoretical value there might have been to those xylosma, as an arborist, would it have been wise to main those two xylosmas in proximity to the oak tree?

A. It would depend on whether or not one values the development and spread of the oak. There's not a lot of space between the oak and the fence line, and to have two shrubs that grow to be trees, I mean, there's a limited amount of space. In fact, the growth of the xylosma closest to the oak tree had already started to shade out the oak tree and prevent its spread in the direction of the fence. So it really depends what you would want to have back there in that space.

Q. I think we understand what the word or the phrase "shade out" means, but if you could just define that for us.

A. If one of the xylosmas was casting shade on the oak and causing some of the oak foliage to die back, which I could see at the time of my site visit, which was a year ago. It was July of '06.

Q. So were the xylosmas allowed to be maintained at that location, it would damage or at least affect the aesthetic value of the oak tree; is that correct?

A. Depending on the side that you look at the oak from. And most of the time, you would be looking at it from the front, but it certainly would affect the spread of the oak tree and would cause some die-back on that back side of the oak tree.

MR. COFFER: Thank you, Mr. Lichter. No further questions at this time.

THE COURT: Let me ask you this: Giving me the value

of the trees, how much would it cost in your opinion to replace these two trees with a similar tree 20 feet high?

THE WITNESS: I don't have the answer to that. You know, I would have to find out what that -- I would have to do some research to find out.

THE COURT: Essentially, wouldn't you have to helicopter it in?

THE WITNESS: Um, maybe, or maybe with a chain or something to try to get it around. I mean, that's not, unfortunately, my business to move very large trees. I know it can be done. It's suggested not to do that in our appraisal methods because, often, it yields unreasonable values.

THE COURT: But to put them back in that same situation they were before it was cut down, it would be more than $940, wouldn't it?

THE WITNESS: To replace the trees with similar size trees, I would think so.

THE COURT: As an arborist, though, you wouldn't replace them with that kind of a tree, would you?

THE WITNESS: I mean, it really would depend on what the owners wanted. I would think that -- I mean, I could talk about it, if it were my property, what I would do. But, I mean, I would -- the trees -- I would rather have the oak trees spread and grow in the direction of the fence, but that's my personal preference.

THE COURT: Thank you.

Do you have any questions you'd like to ask?

MR. SNOW: Yes.

CROSS-EXAMINATION

BY MR. SNOW:

Q. Mr. Lichter, you agree those were trees?

A. Yeah.

Q. The height, they were trees?

A. Yeah.

Q. And I have an estimate that we received from Urban Tree Farm Nursery. Are you familiar with them?

A. No, I am not.

MR. SNOW: Maybe Mr. Lichter can look at this, see if this thing is reasonable.

THE WITNESS: Okay.

MR. SNOW:

Q. Is that another name for that type of tree?

A. No, that's a different species.

Q. Okay. We were told by --

MR. COFFER: Well, I am going to object.

THE COURT: Wait a minute.

MR. COFFER: Objecting to anything said by --

THE COURT: Sustained.

MR. SNOW:

Q. How much, in your experience, Mr. Lichter, would it cost to replace a tree, say, 20, 25 feet high, as the judge asked, and put it back in the ground at that height?

A. I don't know.

Q. You don't have any experience with -- in your appraisal experience -- with what that would cost to replace?

THE COURT: Wait a minute. I think this is outside

the realm of his expertise. He's an arborist, not a contractor.

MR. SNOW:

Q. So you don't plant trees?

A. No, I do not.

MR. SNOW: Okay. No further questions, Your Honor.

MR. COFFER: Just one follow-up.

REDIRECT EXAMINATION

BY MR. COFFER:

Q. Other than the aesthetic value of not having the xylosmas as trees behind that oak tree, your personal view of that, at least, would there be any other reasons you can think of why to or not to allow those xylosmas to grow into trees in close proximity to the oak tree?

A. Just perhaps how it might affect the neighbor, as in terms of shading their garden, if one wanted to consider that.

Q. What do you mean by that?

A. Uh, that the growth of a xylosma, you know, it can spread a fair amount, and depending on what was being grown in the adjacent yard, it could affect the growth of what is under the xylosma.

MR. COFFER: Thank you. No further questions.

THE COURT: Okay. Thank you.

THE WITNESS: Thank you.

MR. COFFER: We have no further witnesses, Your Honor. We would move our Exhibits A through I into evidence.

THE COURT: All right. A through I can be received in evidence. All right. Is it submitted?

MR. COFFER: Your Honor, I have just a very few closing comments. From Mr Rivera's point of view, what has transpired is he did take reasonable efforts over an extended period of time to have Mr. Snow trim his own tree back or cut it back to a reasonable level so that it would not threaten his yard. As I said, I think those requests were reasonable. After approximately two years had passed and Mr. Snow had not done anything to change those conditions, something that was threatening, if not actually damaging Mr. Rivera's property, he sent Mr. Snow a letter, asking him to please address this issue.

Not only did Mr. Snow not respond by trimming back the tree, he took no action to respond to the letter, to send Mr. Rivera a letter himself or to go over to his property to let Mr. Rivera know that he would take every reasonable effort to make sure that Mr. Snow's trees did not damage Mr. Rivera's property. Those things seem to be reasonable ways in which neighbors conduct affairs between one another.

Mr. Snow took absolutely no action, nor gave Mr. Rivera any reason to believe it would ever take place. Even after that, Mr. Rivera waited a number of months after the letter, more than a month, a month and a half, until June 22nd, when he happened to see Mr. Snow and asked him if he received the letter, which Mr. Show acknowledged he received. Then Mr. Rivera asked him when he might be able to trim that tree back. Mr. Show's response was, apparently, that he would get around to it. That sounded like his testimony in court today and that was Mr. Rivera's recollection as well, that he would get around

to it. It had been almost two years since Mr. Rivera made the first request.

Mr. Snow then volunteered himself; "If you want to cut it back, then you can cut it back." When Mr. Snow first testified, those are the words he used, "cut," not "trim." But I don't think it matters because Mr. Snow transferred the authority to Mr. Rivera to alter those two xylosmas. Mr. Snow took no action to limit what authority Mr. Rivera would have in cutting those trees back. In doing that, in not being specific about what he wanted, I think all we're left with is what would be a reasonable approach to cutting back those trees.

Mr. Rivera's testimony was that all he intended to do was what he believed to be reasonable. He had been given no guidelines by Mr. Snow. Since everyone else in the neighborhood had those same xylosmas and were maintaining them as shrubs and not close to the property line, it would result in those trees growing into Mr. Rivera's yard, both by roots and the overhanging, which would eventually not only clog the gutters, as Mr. Rivera testified did happen, but also potentially threaten the tiles that were affixed to Mr. Rivera's home.

Mr. Rivera's decision to cut those trees back were, I think, reasonable ones, to shrubs. Even if the Court does not believe that Mr. Rivera's conduct was reasonable, after all the time that he had waited, almost two years for Mr. Snow to take some action, the question then becomes what is the value of those trees? And in our view, Mr. Lichter's testimony

should have the greatest sway in this issue. He estimated the value of those trees to be approximately $478. I believe he said a little bit less than $500. And I think what's interesting is that is the value that the insurance company placed on those two trees.

Mr. Lichter testified that he arrived at his estimate independent of any other information. The insurance company valued both trees together at $1,000 or $500 apiece. In our view, I think that the insurance company arrived at a reasonable value and they paid that reasonable value to the Snows. Beyond that, the Snows have subrogated or they have allowed --

THE COURT: Well, I don't know whether they subrogated or not. I read the letter. I mean, they're certainly entitled to the -- he's certainly entitled to the deduction for what they were paid.

MR. COFFER: Well, there was no deductible. I am not sure what the Court was referring to when it said "deductible."

THE COURT: Well, the letter indicates -- you're saying it indicates something about subrogation. But when they pay less than what the person is claiming, often they will release their subrogation rights back. And I don't know if that has been done or not.

MR. COFFER: Well, there isn't any direct testimony in that regard. All we do know is that insurance company claims they are standing in place now of the Snows, and they have, as I said, estimated the reasonable value of those two plants to be $500 apiece. With those comments, at this point

we'll submit the matter.

MRS. SNOW: Yes, Your Honor, I have some communication with the insurance company.

MR. COFFER: Well --

THE COURT: That is the very reason I am not letting Mr. Coffer go into it. There's no witness here.

MRS. SNOW: Well, when I talked to them, they said this --

MR. COFFER: Well, that's hearsay.

MRS. SNOW: This is all they can give is --

MR. COFFER: I am going to object to this, Your Honor. It is introducing new evidence, and I don't believe it is necessarily accurate.

THE COURT: This is argument.

MRS. SNOW: Okay. I don't know what I am doing. This is -- when we bought the house, Your Honor, it has a "For Sale" sign out in front of it. They were trees, Your Honor.

MR. COFFER: This, again, is evidence that was not introduced.

MR. SNOW: Your Honor, we'll finish by saying Mr. -- number one, Mr. Rivera was never given permission to cut these trees down. As for -- a reasonable person would, I think, would at least come over and say, "Steve, you know, remember you said I could cut the trees down? I am just letting you know they're 35 feet tall, so I just thought I would let you know." That was one of the reasons Mr. Rivera was never given permission. We got the tall trees between both our properties. Now, that tree could have gone his way, damaged his roof tiles.

He's so concerned about damages. Mine -- he could have been injured on my property, could have caused injury to my daughter, my dog.

THE COURT: Listen, that's not part of this lawsuit.

MR. SNOW: Then I will let what we have there stand, Your Honor. I think -- I believe those are reasonable. We did deduct all that we were paid for the insurance company from the amounts that we totaled there. I think you can see there on the itemized sheet. And we'll let that stand then, Your Honor.

MR. COFFER: Just one last comment on the fence. It's a very minor issue, but I believe the Snows requested some amount of money for the fence. The fence was a new addition, and I don't believe it had anything to do with their claim of damage by falling branches or trees. The damage to the Snows' fence has gone unrepaired. We're probably talking about a dollar or two, in terms of a board, if they ever want to replace it.

And finally, even if Mr. Rivera had just trimmed the trees, as Mr. Snow had in mind, there would have been some clean-up responsibility, and that responsibility would have been the Snows'. So I don't believe they would be entitled any of that. The trees could have grown back, as I mentioned, as trees. And we'll submit it.

THE COURT: Okay. Well, first of all, I think Mr. Rivera has a right. Mr. Rivera's right goes to trimming any overhanging branches on the property line, not to cut down trees on the other property, and he could have done that.

You've got two ways you can damage it. A tree can damage either the diminished value of the property or the replacement value. And probably, I think, it's something in between the two of them.

So I am going to value these trees at $1,000 each. I am going to deduct what the insurance company paid, which leaves $1,000 left over, and that's going to be the amount of the judgement.

MR. COFFER: Thank you.

THE COURT: Plus costs.

(Adjournment).

--oOo--

CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

--oOo--

I, HOLLY A. ERION, CSR, certify that I am a Certified Shorthand Reporter, and that I recorded verbatim in shorthand writing the following proceedings completely and correctly to the best of my ability:

COURT:	SUPERIOR COURT OF CALIFORNIA COUNTY OF SOLANO
JUDGE:	HONORABLE FRANKLIN R. TAFT, Ret.
ACTION:	MARY L. SNOW, Plaintiff Vs. JUAN RIVERA, Defendant CASE NO. FCS029178
DATE:	MAY 4, 2007

I FURTHER CERTIFY that I have caused said shorthand writing to be transcribed into typewriting by Computer-Aided Transcription, and that the preceding pages 1 through 48, inclusive, constitute an accurate and complete transcription of all of my shorthand writing for the date specified.

DATED: June 26, 2007

Holly Erion

HOLLY A. ERION, CSR
Official Court Reporter
CSR License No. 12427

APPENDIX C

NOTICE OF HEARING ON PETITION FOR WRIT OF CERTIORARI

ENDORSED FILED
July 24
Clerk of the Superior Court
Linda G. Ascraft
By Jamielynne Harrison,
Deputy Clerk

Superior Court County of Solano
Department Two

Juan Bautista Rivera,
Plaintiff,
Vs.
Superior Court of the State of California, for the County of Solano, defendant.

Mary L. Snow and Stephen Snow
Parties in Interest

CASE NO. FCS029830
NOTICE OF HEARING
ON WRIT OF MANDATE

NOTICE IS HEREBY GIVEN, a hearing regarding the writ of mandate has been scheduled for August 28, 2007, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department Two of the above-entitled court, located at 600 Union Ave, Fairfield California.

Dated July 24, 2007

LINDA G. ASCROFT
By: Jamielynne Harrison, Deputy Clerk

Notice of Hearing on Writ of Mandate

APPENDIX D

DEPARTMENT TWO – JUDGE WILLIAM C HARRISON TENTATIVE RULING FOR HEARING SCHEDULED TUSDAY SEPTEMBER 11, 2007

RIVERA V. SUPERIOR COURT OF SOLANO
Writ of Certiorari filed by Petitioner Rivera

Tentative Ruling

The writ of certiorari filed by petitioner is denied. The court finds that the trial court did not exceed its jurisdiction in rendering judgment following trial de novo in the small claims action filed against petitioner by Mary and Stephen Snow (Case No. FCS029178).

APPENDIX E

REPORTERS TRANSCRIPT
SEPTEMBER 11, 2007

COPY

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SOLANO

HONORABLE WILLIAM C. HARRISON, Presiding

-oOo-

JUAN RIVERA,

Plaintiff,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,

Defendant.

No. FCS029830

ENDORSED FILED
Clerk of the Superior Court
OCT 18 2007
LINDA G. ASHCRAFT
By BEVERLY O'HARA
DEPUTY CLERK

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WRIT OF CERTIORARI

TUESDAY, SEPTEMBER 11, 2007

-oOo-

A P P E A R A N C E S

-oOo-

For the Plaintiff: JUAN RIVERA
IN PROPRIA PERSONA

For the Defendant: NO APPEARANCE

LAURA FORSTER
Official Court Reporter
CSR License 8832

TUESDAY, SEPTEMBER 11, 2007

-oOo-

The above-entitled matter came on regularly this date for WRIT OF CERTIORARI in the Superior Court of the State of California, in and for the County of Solano, before Honorable WILLIAM C. HARRISON, Judge, presiding.

The Plaintiff, JUAN RIVERA, was present and represented IN PROPRIA PERSONA.

The Defendant, SUPERIOR COURT OF THE STATE OF CALIFORNIA, was not represented.

LAURA FORSTER, CSR, Official Court Reporter, was present and acting.

The following proceedings were had and taken, to wit:

P R O C E E D I N G S

-oOo-

THE COURT: Then I have Juan Rivera versus the Superior Court of the State of California.

MR. RIVERA: Good morning, your Honor.

THE COURT: On this one, I gave a tentative ruling. Did you get that?

MR. RIVERA: Excuse me?

THE COURT: I gave a tentative ruling on this.

MR. RIVERA: No, I haven't received anything, but the order to appear in September.

THE COURT: And your name is?

MR. RIVERA: My name is Juan Rivera, your Honor.

THE COURT: Okay. And on this one, Mr. Rivera, the Court's tentative was that the writ of certiorari filed by

petitioner Rivera is denied. The Court finds that the trial court did not exceed its jurisdiction in rendering the judgment following the trial de novo in the small claims court action filed against petitioner by Mary and Stephen Snow. That was case number FCS029178.

That's my tentative ruling, and you tell me why it should be different.

MR. RIVERA: Your Honor, uh, there's several reasons why the ruling should be different. One of the reasons is that this matter has extended for over three years in which I have made other requests to the Snows to evade their motions.

My petition, Exhibit 7, has 2003. You can clearly see exhibits the limits of the nuisance that they were created over my property. It was fair for me to request before these -- before September -- 11-15, 2003, to ask Mr. Snow to evade the nuisance. On this day, particularly this day, I asked Mrs. Snow, to give notice -- second notice --

THE COURT: But I can't retry the case. What you filed now --

MR. RIVERA: Yes, your Honor.

THE COURT: You had --

MR. RIVERA: I'm getting to the point that you asked me to why should I consider that it should be different in the decision.

THE COURT: Okay.

MR. RIVERA: My reason for consideration of that is because on June 22nd of 2005 Mr. Snow himself proposes

myself to cut down the nuisance. In 2003, I explain to Mr. Snow the conditions of the convenience and restriction for the area and also the City ordinance. That day I pointed out to Mr. Snow how is the areas a nuisance in which is three feet high. For the Court to deny myself the police power -- the Vacaville police, uh, agendas and their decisions and their ordinance, it would be a denial of due process in that denial of due process would cause, uh, excessive jurisdiction. It would be unfair for the Court to deny me something which the law provides for my protection on my property.

And in denying myself in that ordinance, which is in Chapter 14 of the City ordinance, the Court would restrict me those limits. Not only that but the ordinance provide that. I did not act on this matter here out of my own will. I acted here on the permission of Mr. Snow to cut down those nuisances. When he provided -- made that proposal that countered that agreement that he provided on June 22nd, 2005, he was aware of the fact that the hedges were to be at three feet high. When I cut them down, I cut them down to three-feet high.

THE COURT: But what you're getting into is the facts, and you're saying that you had an agreement with him, and he says, go ahead, or whatever.

MR. RIVERA: Yes.

THE COURT: And you go do what you do, and then when you do what you do, he says, wait a minute, you've gone way beyond what I felt you should do, and you've ruined my

trees, or whatever. Then you went to trial in a small claims court, correct?

MR. RIVERA: Correct, your Honor. I'm following you.

THE COURT: And then you went to another trial in a trial de novo, correct?

MR. RIVERA: I'm following you, your Honor, yes.

THE COURT: Right. And so now then you bring a writ of certiorari, which are very rare, but -- I think I've been a judge now 17 years, I think this is the first one I've had. So you've brought a writ of certiorari, which you can do, but that only can be applied for, like you say, due process or --

MR. RIVERA: Excessive jurisdiction.

THE COURT: -- errors that are way beyond anything. But what you're attacking is the finding of the Judge, and the Judge listened to both sides and made a decision based on the facts.

So what I'm saying is what was done was done, and then you can't appeal any more because it's small claims. But you can have a writ of certiorari if you had these areas of law that could apply, but I'm saying that they don't.

MR. RIVERA: Well, your Honor, if you look at the City ordinance standard Chapter 14, section 14.09.074.120(A), capital A, 1(b), that ordinance itself, which is the law, established that the front yard hedges should be at three feet high. For the Court to deny me that that ordinance exists, it would be a denial of due process. That denial

of due process would be an excessive of jurisdiction. And considering the factor like the Court just mentioned, and now he says, oh, I didn't like the way you cut it, I just -- now I'm going to sue you. I'm going to arrest you. I'm going to do this. I'm going to do that because I don't like the way you cut it, then would have to be turned out to the matter of satisfaction. In order for -- uh, when we talk about satisfaction on a problem -- or, on a satisfaction on -- or, a satisfaction on the service, we have to talk to -- then we would have to turn around to what is a reasonable person would do in similar circumstances, whether another person would be satisfied. By bringing that to the satisfaction law, which is -- there are certain cases which in certain part follow that principal of the reasonable man satisfaction, it's not for the -- it's not to come into the court and say, no, I'm not satisfied because I don't like it. The fact that they don't -- they're not satisfied with it, it's not because they didn't like it, it's just because of the pattern that have been going on through all of this time here.

The statute itself, the ordinance itself, Civil Code 3479, all of these things, my property rights and all of these things that has come into it actually establish a factor that I went reasonably, as a reasonable man would do, Mr. Snow, uh, this here is causing a problem with my yard, your oak tree is causing a problem with -- the roots is causing a problem with the sprinkler, is wrecking the sprinkler heads, it's breaking the sprinkler heads.

Sometime last -- after that, some trees -- whatever months lapse, I give him a second notice. They took no action. On the second action, the action they took was to report me to the police station and have the police have some kind of a labor and slander on the police station that I assert to them, which I only did pursuant to request. Due to the fact that that same day they came over to my wife and myself at home and challenged to fight, I let things cool down for about a year and a half. The nuisance continued on to grow you see in Exhibit 7. And they did nothing about it. And in that testimony --

THE COURT: See, you're going into the facts. Let me put on the record what I researched so that you have that, and then -- in other words, where you're filing a writ of certiorari, which you've done, and in such a case, the writ must establish that, one, the act to be reviewed is judicial in nature, two, the act to be reviewed has been completed, three, the lower court lacked jurisdiction or acted in excess of its jurisdiction, that's what you're claiming, and, four, there's no right to appeal.

In your case, the act to be reviewed is judicial in nature, and it is complete, so you've satisfied those. And as a judgment following a trial de novo of a small claims court, there's no right to appeal. So now you have your right to a writ of certiorari.

Okay. But the issue remaining to be determined is whether the Court lacked jurisdiction or acted in excess of its jurisdiction in issuing its judgment following the

trial de novo. And you contend that the Court exceeded its jurisdiction in rendering the judgment because the judgment deprives you of rights under an oral agreement that you had with the Snows to cut the trees and also deprives you of your Constitutional right to enjoy your own property.

MR. RIVERA: Correct.

THE COURT: That's what you're claiming. And the Court may exceed its jurisdiction by violating constitutional limitations or restrictions on its power to act, such as notifying a lower court when it has no authority to do so, or modifying a lower court. A Court may also exceed its jurisdiction by violating statutory limitations on its power to act, such as accepting a case on appeal when no right to appeal exists, making an order on a case that is up on appeal or granting relief when a motion was required but not made. A Court may also exceed its jurisdiction by violating procedural rules that limits its power, such as in administrative proceedings, you have to exhaust your administrative remedies before you get to court.

In your case, there are no circumstances that indicate the trial Court exceeded its jurisdiction in any of these ways when it issued the judgment following the trial de novo. You're telling me, and you've showed me those documents there, that the judgment was wrong or erroneous that they made the wrong decision.

MR. RIVERA: Yes.

THE COURT: However, the writ of certiorari doesn't

lie on a wrong ruling. And in small claims, the appeal process was -- all you had was a trial de novo. After that, that's it. So all that happened in this case is that you don't agree with what the Judge did. But there's nothing I can do, so that's why --

MR. RIVERA: Your Honor --

THE COURT: -- I denied the writ. I continue to deny the writ of certiorari, so you're basically out of court.

MR. RIVERA: Your Honor, I -- I'm emphasize with your ruling, and I emphasize with your experience, and I endorse to you that to allow this ruling to stand the way it's standing right now is a great miscarriage of justice.

THE COURT: Well, I mean, that's what happens when you go to court. In other words, one side is going to win. One side is going to lose.

We had a jury trial here two weeks ago that went for three weeks. The lady's claim was that a doctor committed malpractice. That lawyer takes that case on contingency, and it goes for three weeks, and they have experts, and they have all kinds of money they've invested, and she lost.

MR. RIVERA: I understand.

THE COURT: So she gets a zero.

MR. RIVERA: I was -- I was before -- I was before you in 1995, and I lost; and I remember that clearly. You probably don't remember because you have so many cases. I was before you in 1995, and I lost. And there's certain times when you lose, and you have to take your loss and

walk away. You have a loss. But when you have something that you have inquired into as a gentleman, as a person, as a neighbor, and the person that provided to you an agreement, for the Court to deprive me of that agreement without limitations, which the law that I provided to you in my brief states that the Court should not add or take away from the agreement, for the Court to deprive me of that agreement, the benefits of that agreement, it deprives me of due process of law.

THE COURT: Okay. I know that's your feeling, but that's not what the law allows me to do. So the writ is denied, and now you just have to live with what you feel is a bad decision. Okay. Good luck.

(Whereupon the matter was adjourned)

//

CERTIFICATE OF COURT REPORTER

-oOo-

I, **LAURA FORSTER**, CSR, hereby certify that I am a Certified Court Reporter and that I reported verbatim in shorthand writing the following proceedings completely and correctly to the best of my ability:

COURT: SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SOLANO

JUDGE: WILLIAM C. HARRISON

ACTION: JUAN RIVERA,
Plaintiff,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
Defendant, No. FCS029830.

DATE: TUESDAY, SEPTEMBER 11, 2007

I further certify that I have caused said shorthand writing to be transcribed into typewriting by Computer-Aided Transcription, and that the preceding Pages 1 through 10, inclusive, constitute an accurate and complete transcription of all of my shorthand writing for the dates specified.

DATED: THURSDAY, OCTOBER 18, 2007

Laura Forster

LAURA FORSTER
Official Court Reporter
CSR License No. 8832

APPENDIX F

COURT OF APPEALS, FIRST APPELLATE DISTRICT 350 MCALLISTER STREET SAN FRANCISCO, CA. 94102 DIVISION 1

COPY

FILED
COURT OF APPEAL FIRST APPELLATE
DISTRICT
NOV. 14 2007
DIANA HERBERT, CLERK
BY DEPUTY CLERK

JUAN BAUTISTA RIVERA
PETITIONER,
v.
SUPERIOR COURT SOLANO COUNTY
Respondent;
MARY L. SNOW,
Real Party in Interest.
A119639
Solano County No. FCS029830

BY THE COURT

The petition for writ of certiorari is denied.
The justices participating in this matter were:
Acting Presiding Justice Stein, Justice Swager and Justice Marqulies.

Date: _____ Stein, J.
Acting P.J.

Ordw1a

APPENDIX G

SUPREME COURT OF THE STATE OF CALIFORNIA
FREDERICK K. OHLRICH
COURT ADMINISTRATOR AND
CLERK OF THE SUPREME COURT

SAN FRANCISCO 94102
EARL WARREN BUILDING
350 MCALLISTER STREET
(415) 865-7000

LOS ANGELES 90013
RONALD REAGAN BUILDING
300 SOUTH SPRING STREET
(213) 830-7590

DECEMBER 10, 2007

JUAN BAUTISTA RIVERA
1133 BEELARD DRIVE
VACAVILLE, CA. 95687

Re: S158896 A119639 Rivera vs. Superior Court, Snow

Dear Juan Bautista Rivera

The Court has granted permission to file the untimely petition for review and the petition was filed December 10, 2007.

An answer to the petition may be served and

filed on or before December 30, 2007, 20days after the petition is filed. The answer may be presented additional issues desired for review if the petition for review is granted.

A reply to the answer may be filed within 10 days after filing of the answer, limited to the additional issues presented in the answer, if any.

Vary truly yours,
FREDERICK K. OHLRICH
Court Administrator and
Clerk of the Supreme Court

By: R. Gilmore, Senior Deputy Clerk

Mary L. Snow 1127 Beelard Drive Vacaville, CA. 95687, Court of Appeal First Appellate District.

APPENDIX H

SUPREME COURT OF THE STATE

Court of Appeal First Appellate District,
Dvi. 1 – A119639
S158896
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
EN BANC

Juan Bautista Rivera, Petitioner,

v.

Superior Court Solano County, Respondent

Mary L. Snow, Real Party in Interest

Petition for Review denied.

SPREME COURT
FILED
Jan 16, 2008
Frederick K. Chirich Clerk

George

Chief Justice

MARY JAMESSON
AUTHOMATIC APPEALS SUPERVISOR
JEORGE NAVARATE
SUPERVISING DEPUTY CLERK
SAN FRANCISCO

—

NATALIE ROBISON
SUPERVISING DEPUTY CLERK

LOS ANGELES

APPENDIX I

RIVERA NUISANCES LETTER TO THE SNOW AND EXHIBITS OF NUISANCES AND DAMAGES

1133 Beelard Drive
Vacaville. CA. 95687

May 6, 2005

The Snow Family
1127 Beelard Drive
Vacaville, CA. 95687

Re: Rivera v. The Snow

To the Sow Family:

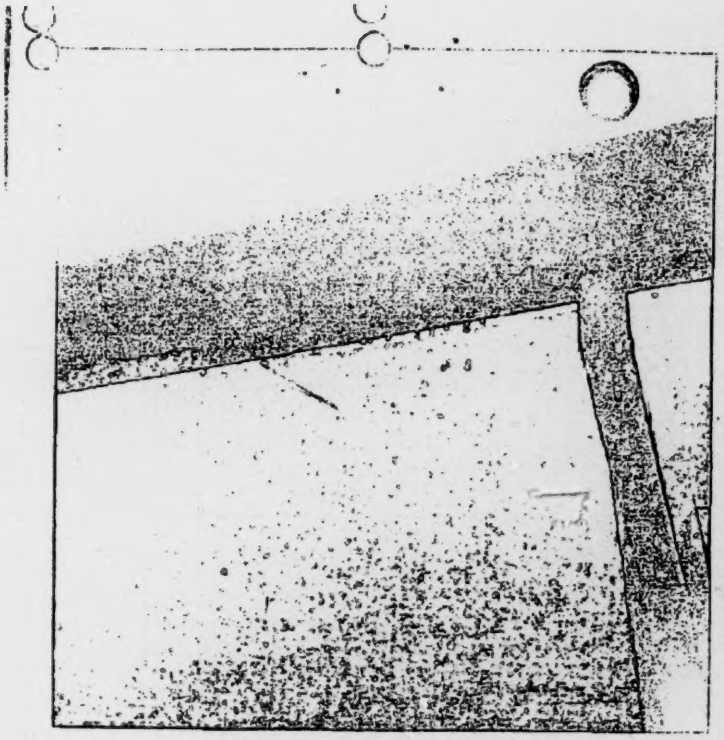
This is your neighbor whom in the pass has requested upon you to keep your branches and threes within you boundary, it is noticeable that you keep trim these branches and roots that may damage your roof and your property, however I have requested upon you to keep your branches of my roof and damaging roots of my property, and you in response have trespass to my property and challenge myself to fight, and further calling me a cower, this civil disorder and criminal behaviors are not accepted with our communities, in fact I here by as your neighbor give you notice of these nuisances in violation of the California Code, for you to reconsider your status and take the actions deemed proper within this matter.

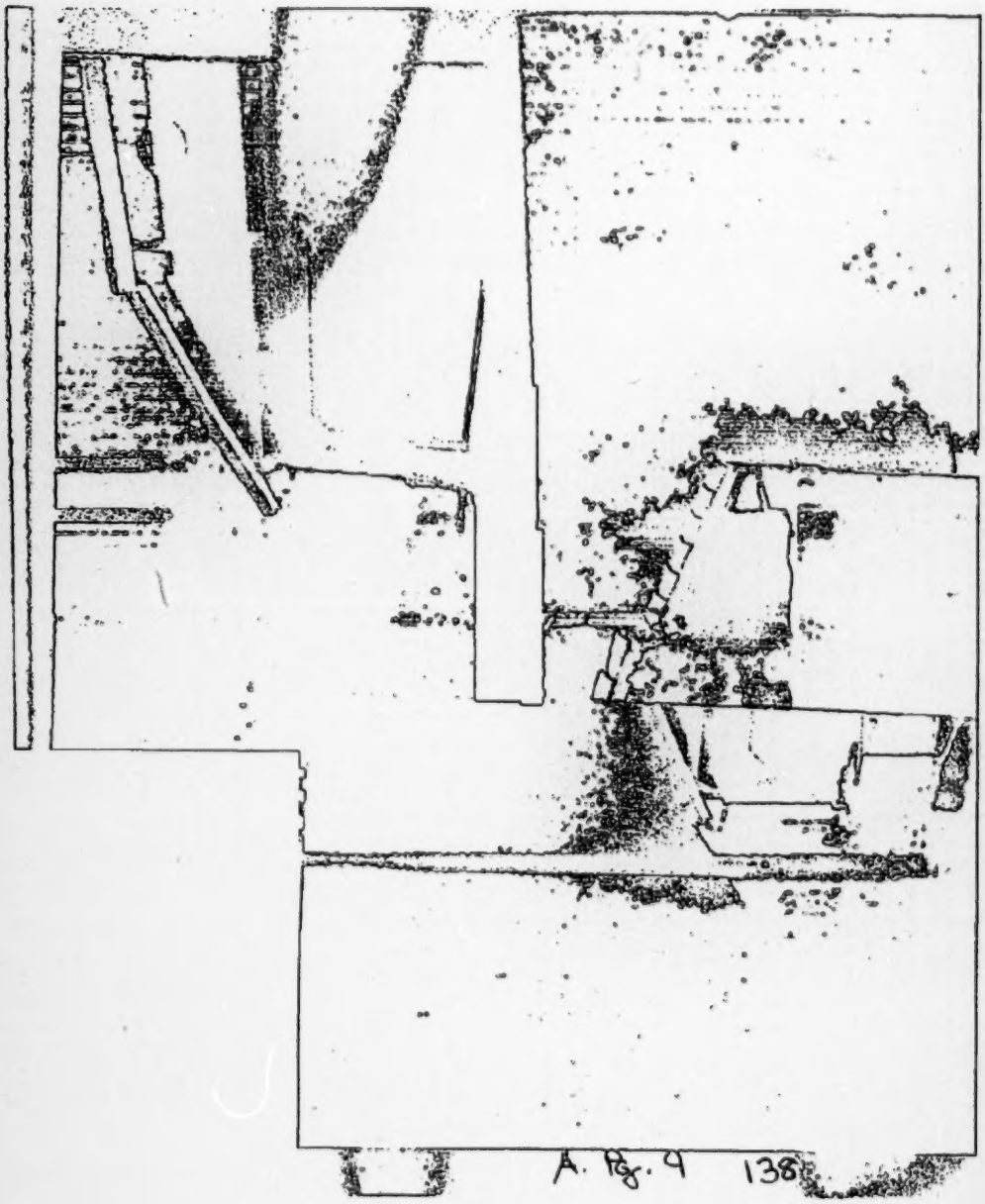
Furthermore enclosed is an example of the gravel that you have in your back yard, this gravel is trespassing onto my property, and the nuisance is that as I use the weed edger the gravel fly's and hits my windows chipping them and perhaps some time will break them, this gravel has also injured my face as it fly's out, I hereby as your neighbor, would ask you again to remove said gravel of my property and keep it with in your boundaries, I also would again ask you to keep your trees, branches and roots trim so that further damages could be prevented.

Your neighbor
Sincerely, your neighbor at 1133 Beelard Drive

PHOTOS ENCLOSED

11-15-2003





A. Pg. 9 138

APPENDIX J

DEFENDANT AND PETITIONER EXPERT WITNESS JOHN LITCHER

From John Lichter

To John Coffer

Re: Snow v. Rivera

Tue, 1 Aug 2006 15:48:19-0700

John,

I just talked with Diane,

Here are some opinions and comments regarding Snow v. Rivera.
Let me know what else you need and/or if you have any questions.

Thanks,

John

Attachment
Comments regarding Snow v. Rivera

Timeline:

Aug 92 Rivera moves in
Late or early 02 early 03 Snow moves in
Betw. April and June 2003: Rivera complains to Snow re size of xylosmas

9/03 Second complaint
5/05 letter regarding xylosmas
6/05 Rivera asked about xylosmas, Mr. Snow said eventually he will cut down;
7/5/05 Rivera cut off branches on lower half of both xylosmas, felled one of tree toward gate. Ms. Snow arrives, He stop.
7/09/05 Photos showing xylosma cut to ground

My Assignment:

Provide opinion on the impact of Mr. Rivera's pruning on shiny xylosmas plants.

From Sunset West Garden Book:

Xylosma congestum or shiny xylosma is a "basic landscape foliage plant"

Xylosma is a shrub or tree

Xylosma can be trained as single or multi-trunked small tree

The coast live oak (planted at the same time as xylosma) which is 18' feet from back yard gate, would overtop the two xylosma at maturity. There is not enough space for three trees in this portion of the yard. The xylosma would prevent the oak tree spreading toward the back yard. Some of the branches of the oak tree nearest the back yard gate were dead, apparently to shading.

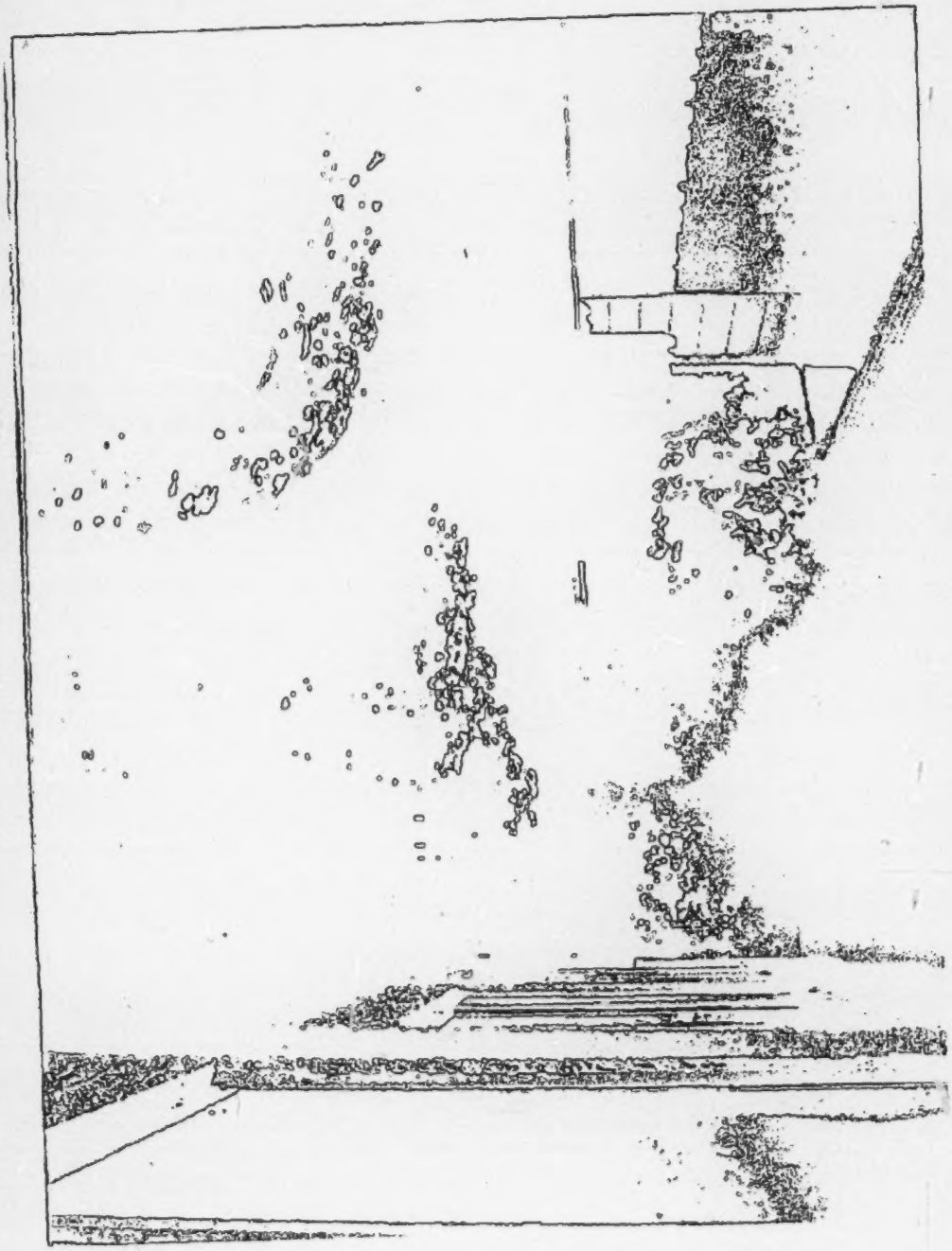
In my experience, xylosma are planted with the intention that they be shrubs.

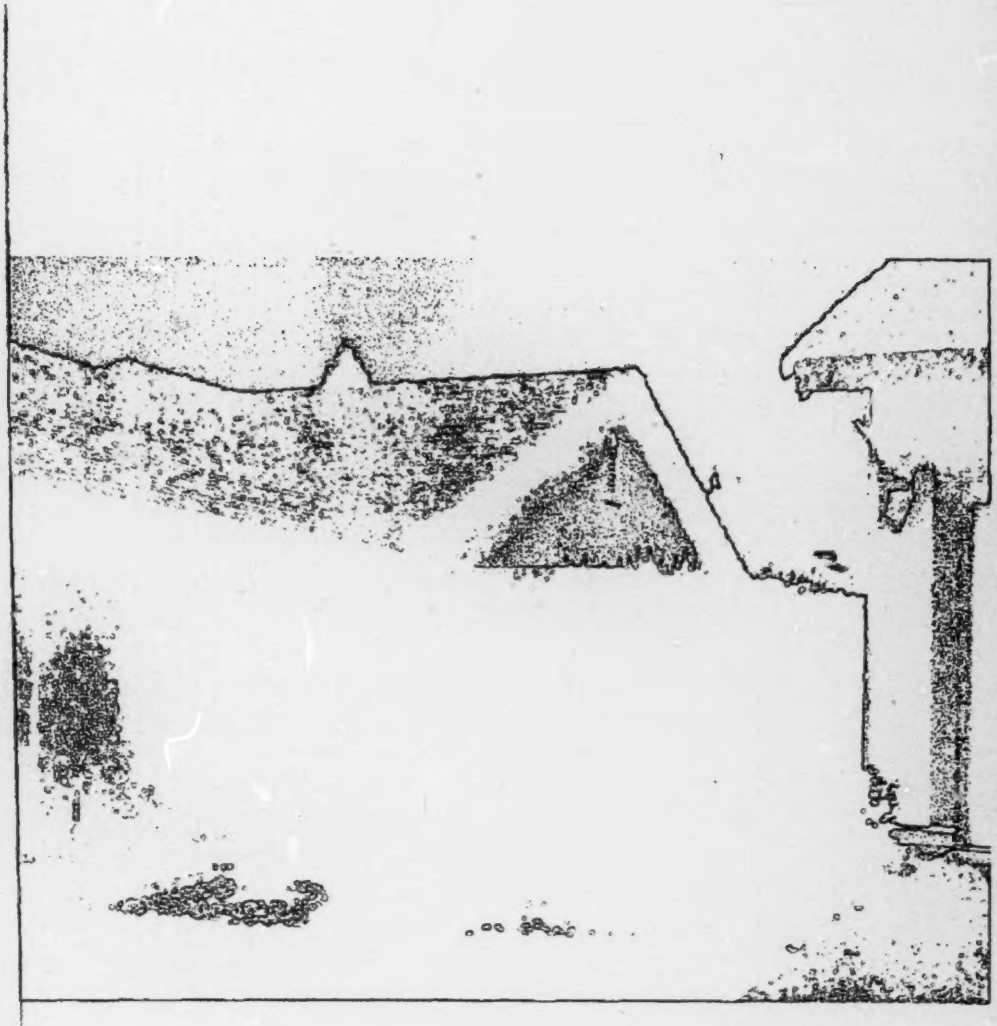
Cutting back the xylosma to three feet will not kill the plant. It would send up many shoots (watersprouts) and form a dense foliage. Could be

maintained as hedge at that point (as Mr. Rivera has on the other side of his property in the side yard.
The form of the plant would change from more open form to a denser from.
Estimated size of xylosma 8" feet diameter.

APPENDIX K

DEFENDANT AND PETITIONER SIDE FRONT YARD XYSLOSMA PLANTS, SHRB AND HEDGES AND DEFENDANT AND PETITIONER COMMUNITY FRONT SIDE YARD, PLANTS AND HEDGES

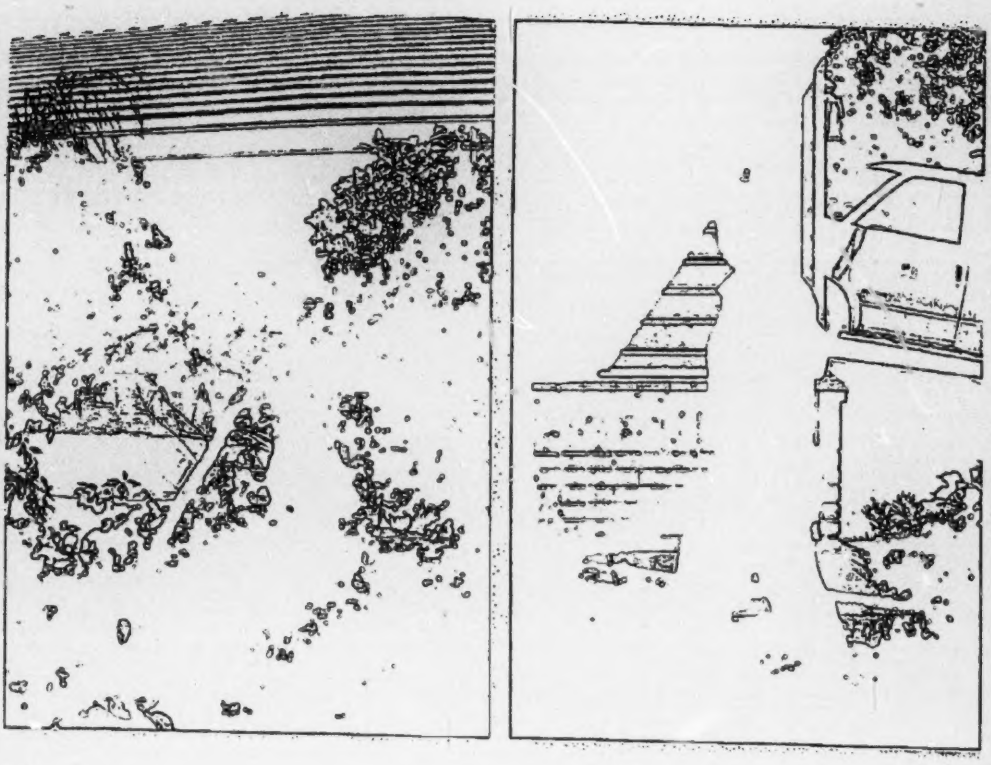




A. Pg. 4

APPENDIX L

DEFENDANT AND PETITIONER REMOVING THE PLAINTIFFS AND REAL PARTIES IN INTEREST DEBRIEF AND HIS OBJECTION TO THE SNOW PHOTO TAKING



APPENDIX M

NOTICE OF APPLICATION FOR WRIT OF CERTIORARI [CCP 1105, 1088] AND PETITION FOR WRIT OF CERTIORARI, DATED JULY 9, 2007

Juan Bautista Rivera
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

Petitioner In Pro per.

ENDORSED FILED
Clerk of the Superior Court
JUL 0 9 2007
LINDA G. ASHCRAFT
By D. BUTLER
DEPUTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF SOLANO COUNTY, STATE OF CALIFORNIA

JUAN BAUTISTA RIVERA,

PETITIONER,

VS.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SOLANO

RESPONDENT,

MARY L. SNOW AND STEPEHN M. SNOW,

Real Party's in Interest.

_____/

CIVIL NO.: FC3029836

NOTICE OF APPLICATION FOR WRIT OF CERTIORARI [CCP §1105, §1088]

To Respondent Honorable Franklin R. Taft, and to the Real Parties in Interest and/or their attorneys of records, Mary L. Snow and Stephen M. Snow:

YOU ARE HEREBY NOTIFIED that on July 3, 2007, or as soon thereafter as the Court could heard the matter in the Appellate Department of the above-entitle court, located at 600 Union Avenue, City of Fairfield, state of

California, petitioner apply to the court for a prerogative writ of certiorari commanding respondent to desist or refrain from any further proceedings in the matter of Mary L. Snow, et al v. Juan Bautista Rivera. The application will be based on the grounds that respondent is exercising judicial functions and the proceedings sought to be restrained are without or in excess of respondent's jurisdiction, as is more fully set forth in the petition attached and served with this notice.

Dated: 7-3-07

Juan Bautista Rivera
In pro per for petitioner,
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

Juan Bautista Rivera
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

Petitioner In Pro per.

ENDORSED FILED
Clerk of the Superior Court
JUL 03 2007
LINDA G. ASHCRAFT
By D. BUTLER
DEPUTY CLERK

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF SOLANO COUNTY, STATE OF CALIFORNIA

ASSIGNED TO
JUDGE SCOTT L. KAYS
FOR ALL PURPOSES

JUAN BAUTISTA RIVERA,

PETITIONER,

Vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SOLANO

RESPONDENT,

MARY L. SNOW AND STEPEHN M. SNOW

Real Party's in Interest.

_____/

Civil No: FCS029783

PETITION FOR WRIT OF CERTIORARI AND MEMORANDUM POINTS AND AUTHORITIES

SUPERIOR COURT OF SOLANO
Small Claims FSC052747 Filed: 10/26/06
Hearing date: 02/14/ 07
Hearing Judge: Raymond C. Wieser
Notice of Appeal Filed: 02/28/07
Trial de novo: FSC029178
Hearing: 05/4/07
Hearing Judge: Honorable Franklin R. Taft

STAY REQUESTED
[CCP § 1071]

Juan Bautista Rivera
Petitioner, In Pro per
1133 Beelard Drive
Vacaville, CA. 05687
Tel. 1-707-452-9728

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STAY REQUESTED

By reason of the judgments described above, respondent threatens to deprive petitioner of the benefits of the real parties in interest, delegations, proposal and subjections with petitioner to cut down the real parties in interest front yard trees, shrubs, plants and hedges, and the court also threaten to deprive petitioner of his constitutional right to the enjoyment of life and property as guarantee to him by state and federal constitutionally protected activities, and will do so unless restrained by order of this court.

TABLE OF AUTHORITIES

Abelleria v. District Court of Appeal (1941)
17 Cal. (2d) 280, 290 — 3

Bradley v. Superior Court
(1957) 48 C. 2d. 509, 519 — 4, 9

Caldwell v. Coppola (1990)
219 Cal. App. 3d 859, 860 — 12

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(1970) 3 Cal. 3d. 462, 488-489,
[Citations], 91 Cal. Rptr. 23, 476 P.2d. 423 — 15

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(1973) 8 C. 3d. 744, 753 — 8, 14

Ersa Grae Corp. v. Fluor Corp
(1991) 1 Cal. App. 4th 613, 615, 623,
2 Cal Rptr. 2d. 288 — 11, 14

Hilliard v. A.H. Robins Co.
(1983) 148 Cal. App. 3d 374, 401, 402
196 Cal. Rptr. 117 — 10, 15

In re Marriage of Carpenter
(1986) 188 Cal. App 3d 604, 611, 612 — 10, 13

In re Mills
(1988) 841 F. 2d. 902, 905 — 14

Ghirardo v. Antonioli
(1996) 14 Cal. 4th 39, 51-52 — 15

Greffin v. Northridge (1944)
153 P. 2d. 800, (Cal. Ct. App) 14, 15

Woods v. Griffin
(1942) 163 S. W. 2d 322 14

ORDINANCE

City of Vacaville Land Use Development, Standards
Section 14.09.074.120. A. 1. (b), Pg 5 of 5; 5, 6, 10, 13

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Civil Code 3479 7, 10, 13
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Code of Civil Procedure
§1105, §1088 Notice of Application

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Code of Civil Procedure
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35 Cal. Jur. 3d, (1977) Statutes of Fraud, § 110, Revised 2005	14
Frauds, Statutes of § 95, Change of Position, Unconscionable injury, p. 157-158	14
California Official Reports, McKinney, Contracts, § 3	9
1 Witkin Summary of California Law (10th Ed) Contracts, Section 244	15

2 Witkin Cal. Procedure (4th Ed), Jurisdiction, Ch. VI. Jurisdiction to Act and Excess of Jurisdiction A. 1. [§226], Pp. 840-841, Nature of Doctrine Excess of Jurisdiction 9, 12, 13

2 Witkin Cal. Procedure (4th Ed), Jurisdiction, Fraudulent Service, (b) [§115], Pp. 659 12

6 Witkin, Summary of California Law (10th Ed) Torts, Section 1730 14

42 CJS Improvements § 5, Pp. 46, Estoppel of Owner 15

CONSTITUIONAL LAW

California Constitution Art. I § 1 and § 9 3, 4

United States Constitution Art. I, §10; 3, 4

United States Constitution First and Fourteenth Amendments 3, 4

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United States Constitution Fourteenth Amendment 5, 10, 12

Juan Bautista Rivera
1133 Beelard Drive
Vacaville, CA. 95687
Tel. 1-707-452-9728

Petitioner In Pro per.

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF SOLANO COUNTY, STATE OF CALIFORNIA

JUAN BAUTISTA RIVERA,

CIVIL NO.:

PETITIONER,

VS.

PETITION FOR WRIT OF CERTIORARI AND MEMORANDUM POINTS AND AUTHORITIES

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SOLANO

RESPONDENT,

MARY L. SNOW AND STEPEHN M. SNOW,

Real Party's in Interest.

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To the Honorable Chief or Presiding Justice and Associated Justice of the Appellate Department of the Superior Court of the State of California in and for the County of Solano:

JURISDICTION

1. This court shall have original jurisdiction of the matter under California Rules of Court, Rule 56. (a); and Code of Civil Procedure §1068, in which in part provides: A writ of review may be granted by any court, except a municipal or justice court, when an inferior tribunal, board, or officer, exercising judicial function, has exceeded the jurisdiction of such tribunal, board, or officer and there is no appeal, nor, in the judgment of the court any plain, speedy, and adequate remedy. Thus, certiorari is a method available to obtain review of respondent's judgment, because petitioner, have no right to appeal from the judgment as of May 10, 2007, and the court threaten to deprive Juan Bautista Rivera, of the plaintiff's and real parties in interest oral delegations and proposal onto petitioner to cut down and abate the real parties in interest nuisances, as guarantee to petitioner under the his constitutionality protected activities under California Constitution Art. I § 1 and § 9; United States Const. Art. I, §10; and the First, Ninth and Fourteenth Amendments to the United States Constitution.

2. The petitioner claims and alleges that in so acting the lower Court acts in excess of its jurisdiction. (A copy of which are attached thereto as Exhibit "1" and made part hereof by reference as though fully set forth). [1]

PARTIES

3. Petitioner is defendant in the above named action.

4. The real parties in interest are the plaintiff's in the above named action.

5. In that Mary L. Snow and Stephen M. Snow, have an interest that is directly affected by the proceedings in action entitled Mary L. Snow, et al. v.

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[1] Abelleria v. District Court of Appeal (1941) 17 Cal. (2d) 280, 290.

Juan Rivera, Civil Action (FSC029178) which holds a judgment against petitioner. (A copy of which are attached thereto as Exhibit "1" and made part hereof by reference as though fully set forth).

6. Petitioner is the person beneficially interested in the issuance of a writ of certiorari by virtue of the facts that he is party to the real parties in interest as of June 22, 2005, oral delegation, proposal, subjection onto petitioner to provide to cut down and abate the real parties in interest front yard trees, plant, shrubs and hedges and nuisances, and as direct and proximate result petitioner is unconscionable injured in the actions entitled Mary L. Snow & Stephen M. Snow v. Juan Bautista Rivera, (FSC052747, Appeal FCS029178) which is neither appealable nor reviewable on appeal and the real parties in interest are thereto unjustly enriched.

7. Respondent, Honorable Franklin R. Taft, is now and at all times mentioned in this petition, judge of respondent court and/or in that capacity are and at all times relevant to this proceedings, has determined that petitioner shall pay the real parties in interest the amount of dollars 1,000.00, in which judgment threatens to repudiate the real parties in interest oral delegations, proposal and subjections onto petitioner to cut down [t]heir front yard XYLOSMAS trees, plants, shrubs and hedges and in so acting the Court deprives petitioner of his constitutionality protected rights of contract under Cal. Const Art. I, § 1, § 9, and under U. S. Const Art. I, § 10 and under the First, Ninth and Fourteenth Amendments to the United States Constitution, Evidence Code § 623; Civil Code § 3515; an act in excess of jurisdiction, and unless restrained and by issuance of certiorari by order of this court, which is the favorable method available to obtain review of the lower court judgment and order. [2]

[2] Bradley v. Superior Court (1957) 48 C. 2d. 509, 519.

STATEMENT OF THE CASE

8. This petitioner for writ of certiorari arises, to secure petitioner constitutional and statutory rights, under the federal and state constitution and statutory law. The plaintiff's, herein the real parties in interest, on or about October 26, 2006 commenced Small Claims action (FSC052747) against herein defendant and petitioner Juan Bautista Rivera. (A copy of which are attached thereto as Exhibit "2" and made part hereof by reference as though fully set forth). The plaintiff's then sought 4,568.00 in compensation from defendant for having cut down two trees on their property.

9. On February 14, 2007, upon the real parties in interest denial of petitioner request for production of documents, witnesses and papers, petitioner brought before the court, the City Land Uses Development Ordinances and the Conditions Covenants and Restrictions, and that petitioner's action as of July 5, 2005, was as direct and proximate result of the real parties in interest continuing violations of the City Land Use Development Standards, and petitioner's due process rights under the Fourteenth amendment to the United States Constitution and their damages and annoyances then directly and proximate caused onto petitioner, and petitioner reliance on the real parties in interest oral delegations and proposal onto petitioner to cut down and abate those nuisances, trees, shrubs and hedges, as of June 22, 2005.

10. A judgment was entered on this action on or about February 14, 2007. (A copy of which are attached thereto as Exhibit "3" and made part hereof by reference as though fully set forth).

11. A notice of Appeal was filed on February 28, 2007. (A copy of which are attached thereto as Exhibit "4" and made part hereof by reference as though fully set forth).

12. A judgment following trial de novo was entered as on or about May 10, 2007. (A copy of which judgment and transcripts are attached thereto as Exhibit "1" and made part hereof by reference as though fully set forth). Thus petitioner, does makes this application for writ of certiorari.

STATEMENT OF FACTS

13. On or about 1989, the City of Vacaville, in and for the County of Solano, approved the land area were petitioner and the real parties in interest reside, for a housing development, thereto the City of Vacaville Planning Commission, passed a Land Use and Development Ordinance, under Ch. 14.09.074, in which under Section 14.09.074.120, at Pg. 5 of 5 passed the restriction for front yard masonry walls, fences and hedges for the district. (A copy of which are attached thereto as Exhibit "5" and made part hereof by reference as though fully set forth). On or about May 6, 1997, the Planning Commissioner Staff, Amended and the Village Hills Planned Development Permit to Allow Installation of Landscaping that Exceeds the Water use Restrictions in the Water Efficient Landscaping Regulations. (Agenda Item No. 1. 1, Pg. 2; A copy of which are attached thereto as Exhibit "6" and made part hereof by reference as though fully set forth).

14. Under the city ordinance and the conditions covenants and restriction conveyances then issued, on or about 1992, Petitioner purchased lot # 66, at 1133 Beelard Drive, of the Village Hills Planned Development Homes. The Nelson's, petitioner's next door family were then living at 1127 Beelard Drive, and on or about 1999, the Nelson's divorced and/or separated, and the premises yard were then neglect, the real parties in interest, herein the (Snow) and successor in interest to said property, purchase the Nelson's property on or about 2001, some time herein after between 2001 and 2003, as direct and

proximate result of the damages and the evasion of petitioner's interest with his property rights, petitioner had conversation with (Stephen M, Snow), in which petitioner then disclosed to the (Snow) the aforementioned ordinance, conditions covenants and restriction, and that as direct and proximate result of the (Snow) front yard trees, shrubs and hedges exceeding those standards limits they were breaking onto petitioner's sprinkle system and clogging petitioner storm drain system. (A copy of which are attached thereto as Exhibit "7" and made part hereof by reference as though fully set forth.

(See, Civil Code 3479, Code of Civil Procedure 731).

15. The real party interest, the (Snow) then conceded that he would take care of those nuisances, nonetheless as direct and proximate result of the real parties in interest, continue neglect and/or omissions, petitioner then on (November 11, 2003), gave further oral notice to (Mary L. Snow and Samantha E. Snow) to remind (Mr. Snow) of these nuisances and matters. As direct and proximate result of petitioner speech, Mary L. Snow, assaulted and derogated petitioner, his ancestors and their origin. (RT).

18. Moreover, (Mary L. Snow) then and thereafter her assault, libel and slander, falsely and maliciously and without reasonable or probable cause initiated police report number (03-10200), in which thereafter she then issued (Mr. Snow) to trespass onto petitioner's private property and assault the petitioner and his immediate family. (A copy of which are attached thereto as Exhibit "8" and made part hereof by reference as though fully set forth).

19. As direct and proximate result of the real parties in interest, continuing nuisances, trespass, assaults, libels, slanders and obstructions of justice, petitioner suffered emotional depression and was hospitalized. As direct

and proximate result of the real parties in interest, continuing, threats, nuisances and damages, then created and maintained, petitioner on May 6, 2005 wrote a letter to the real parties in interest. (A copy of which are attached thereto as Exhibit "9" and made part hereof by reference as though fully set forth).

20. On June 22, 2005, on or about 9:45PM, (Stephen M. Snow) was found by petitioner, adjacent to petitioner property line, were petitioner then had a conversation in reference to the letter then issued as of (May 6, 2005) to the real parties in interest. (Exhibit "9").

21. The petitioner claims and alleges that as direct and proximate result of the continuing nuisances, the real party in interest (Stephen M. Snow) then orally delegated and proposed onto petitioner to cut down and abate those front yard trees, shrubs and hedges, whereas on June 22, 2005, petitioner believed the real parties in interest intentions to bring those nuisances onto compliance with the land uses developments and petitioner accepted the real parties in interest oral delegations and proposal to cut down/abate those trees, plant, shrubs and nuisances. Whereas direct and proximate result of the parties in interest oral delegation, proposal and subjections and in reliance thereof on July 5, 2005, petitioner cut down/abated most of [t]heir nuisances, bringing those front yard trees, plants, shrubs and hedges onto compliance with the City Land Use Developments. (Crail v. Blakelly (1973) 8 C. 3d. 744, 753).

22. The petitioner claims and alleges that as direct and proximate result of the real parties in interest oral delegation and proposal and subjections as of June 22, 2005, the real parties in interest in oppression of [t]heir delegation, proposal and subjective facts, as of June 22, 2005, does on July 5, 2005, falsely and maliciously and without reasonable or probable cause, cause the arrest of petitioner under Penal Code Section 594, and on July 6, does cause a restraining order against petitioner under Code of Civil Procedure 527.6.

23. Petitioner claims and alleges that the real parties in interest, criminal action under section 594, and under civil action under Code of Civil Procedure Section 527.6, actions # (FCR226006 and FCS26290) have been dismissed and/or dropped.

SPECIFIC ERRORS, BASES FOR RELIEF, AND STATEMENT OF FACTS

22. The petitioner claims, and alleges that Stephen M. Snow, on June 22, 2005 on or about 9:45PM, confirmed having received petitioner "Exhibit 6 Thereto" and upon further discussions about those tress, plants, shrubs, hedges, and nuisances, as agent of his property, Stephen M. Snow orally delegated, proposed and subjected onto petitioner Juan Bautista Rivera to cut down/abate [t]heir front yard XYLOSMAS trees, plants, shrubs and hedges. Petitioner claims, and alleges that the real party in interest delegation, proposal, subjection and agreement with petitioner did not set limits for cutting down and/or abating of these front yard XYLOSMAS trees, plants, shrubs and hedges, and that the real party in interest, intended to have those on compliance with the city land use developments. [3]

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[3] See, Evidence Code Section, § 623, covering communications which are the ultimate fact of subject matter of the judgment, reviewable in this proceedings; Cal. Civil Code § 3515; California Official Reports, McKinney, Contracts, § 3; 2 Witkin Cal. Procedure (4th Ed), Jurisdiction, Ch. VI. Jurisdiction to Act and Excess of Jurisdiction A. 1. [§226], Pp. 840-841, Nature of Doctrine Excess of Jurisdiction.

In Bradley v. Superior Court (1957) 48 C. 2d. 509, 519, The Court held, that "Neither the court nor the Legislature may impair the obligation of a valid contract (citation) and a court cannot lawfully disregard the provisions of such contracts or deny to either party his rights thereunder. Petitioner claims and alleges that the lower Court has done so in this matter and in depriving the petitioner of the benefits of the contract, the Court has act in excess of its jurisdiction.

23. The petitioner claims, and alleges that at all times herein relevant the real parties in interest and each of them had the ability and financial resources to maintain those XYLOSMAS front yard trees, plants, shrubs and hedges in compliance with in the City of Vacaville land use development standards, and petitioner rights as guarantee to the petitioner under the Fourteenth Amendment to the United States Constitution, and under Title 42 U.S.C. §1981, § 1982; California Civil Code Section 3479 and Vacaville City Ordinance, Land Use Development, Standards Section 14.09.074.120. A. 1. (b). [4] Thus, on or about July 9, 2005, the real parties in interest cut down/abated and wasted their trees, plants, shrubs and hedges down to their stumps. [5] (A copy of which are attached thereto as Exhibit "10" and made part hereof by reference as though fully set forth; which also shows this court, how the real parties in interest, the (Snow) thereafter July 9, 2007, does seek to conceal those roots, mentioned on (Exhibit "9").

24. The petitioner claims, and alleges that Stephen M. Snow made such representation as June 22, 2005, with knowledge, and his free will, intending that petitioner act and cut down/abate their front yard XYLOSMAS trees, plants shrubs and hedges to the land uses development, standards. (Civil Code § 1584, § 1650; Evidence Code § 623).

25. The petitioner claims, and alleges that on July 5th 2005 on or

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[4] In re Marriage of Carpenter (1986) 188 Cal. App 3d 604, 611-612, There are constitutional limits on state's power to abridge existing contractual relationship, however, even in the existence of its police power.

[5] See, e. g Hilliard v. A. H. Robins Co. (1983) 148 Cal. App. 3d 374, 401-402, Such conduct is admissible evidence on the punitive damages issue in order to provide meaningful consumer protection against the manufacture, etc.

about 8:30AM, in reliance of such representation, petitioner commenced to cut down/abated the real parties in interest front yard XYLOSMAS trees, plants shrubs and hedges to the land uses standards. Petitioner claims and alleges the real parties in interest received the benefit which they barging for. [6]

26. The petitioner claims, and alleges that in so acting, as set forth above petitioner was not aware of the falsity of the representation made by Stephen M. Snow and reasonably believed the representation to be true.

27. The petitioner claims, and alleges that as direct and proximate result of the real parties in interest and each of them joint acts, concerts and ratifications and representations and oppressions above-recited, on July 5th 2005, the real parties in interest and each of them, where able to assaulted, libel and slander and falsely and maliciously and without reasonable or probable cause, cause a civil arrest of petitioner Juan Bautista Rivera and to cause the Vacaville Police Department to raid the petitioner home and as direct and proximate result, petitioner was arrested, detained, forced to remain where he did not wish to remain or to go where he did not which to go, and cited under Penal Code Section 594, and released on promise to appear.

28. The petitioner claims and alleges that on July 5, 2007, petitioner objected to the real parties in interest innuendos and photo taking of the petitioner after his release form the recited arrest. (RT).

29. The petitioner claims, and alleges that as direct and proximate result of the real parties in interest, and each of them joint acts and concerts, representations and oppressions aforementioned, on July 6, 2005, were able to further assault, libel and slander and falsely and maliciously and without

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[6] Civil Code §1584, §1650; Evidence Code § 623; Ersa Grae Corp. v. Fluor Corp. (1991) 1 Cal. App. 4th 613, 615, 623, 2 Cal Rptr. 2d. 288.

reasonable or probable cause, initiated action (FCS026290), and as direct and proximate result each of them joint acts and concerts and ratifications Mary L. Snow, Stephen M. Snow, Sarah A. Snow, Samantha E. Snow, and Shaunna L. Wouda, interested party and each of them on July 6, 2005, fraudulently and oppressively caused and made, their own service process in action (FCS026290), against the petitioner. [7]

30. The petitioner claims and alleges that the real parties in interest actions (FCS026290 and 03-10200 and citation 201676 Case # FCR226006), have been dismissed and/or dropped.

31. The petitioner claims and alleges that as direct and proximate result of the real parties in interest nuisances and conducts the petitioner and his de facto spouse have lost the comfort and privacy of their home and property, as guarantee to then under the Ninth and Fourteenth Amendment to the United States Constitution and Under Title 42 U.S.C. § 1981, § 1982.

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[7] See, Caldwell v. Coppola (1990) 219 Cal. App. 3d 859, 860; Code of Civil Procedure 414.10; 2 Witkin Cal. Procedure (4th Ed), Jurisdiction, Fraudulent Service, (b) [§115], Pp. 659; and Ch. VI. Jurisdiction to Act and Excess of Jurisdiction A. 1. [§226], Pp. 840-841, Nature of Doctrine Excess of Jurisdiction.

MEMORANDUM OF POINTS AND AUTHORITIES

THE SUPERIOR COURT EXCEEED ITS JURISDICTION AND ABUSE ITS DISCRETIONS WHEN IT REPUDIATES THE REAL PARTIES IN INTEREST ORAL REPRESENTATIONS, DELGATIONS, PROPOSAL AND SUBJECTION ONTO PETITIONER AFTER PETITIONER IN RELIANCE THEREON AND CHANGE HIS POSITION AND PROVIED THOSE SERVICES. IN SO ACTING THE COURT DEPRIVES THE BENEFICIARY OF THE ORAL DELEGATIONS, PROPOSAL AND SUBJECTIONS OF CONSTITUTIONALLY PROTECTED BENEFITS AND THERETO THE COURT UNCOSIONABLY INJURE, DAMAGES THE BENEFICIARY AND UNJUSTLY ENRICHES THE REAL PARTIES IN INTEREST. [8]

Thus, the real parties in interest are taking advantage of their own wrong, too within the actions herein at issue, they maintain a serious of tortuous act against petitioner and his de facto spouse, thereto the real parties in interest

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[8] On or about 1989, the City of Vacaville, passed a City Land Use Development, Ordinance, limiting these front yard hedges, shrubs and fences to 3 feet in height, and thereto with the developers a contract was entered into as the Condition Restriction and Convents. (See, City of Vacaville Land Use Development, § 14.09.074.120. A. 1. (b); Civil Code 3479; Code of Civil Procedure Section 731; Civil Code Section 1460; In re Marriage of Carpenter (1986) 188 Cal. App. 3d. 604, 611-612; 2 Witkin Cal. Procedure (4th Ed), Jurisdiction, Ch. VI. Jurisdiction to Act and Excess of Jurisdiction A. 1. [§226], Pp. 840-841, Nature of Doctrine Excess of Jurisdiction. (A copy of which, trees plants, shrubs and hedges of the neighboring front yard hedges are attached thereto as Exhibit "11" and made part hereof by reference as though fully set forth).

have willfully and wantonly omit to maintain their property, and upon notice have derogate petitioner, his origin and ancestors, and have libel, trespass, assault, obstruct justice, evade of arrest, create offensive innuendos, and other assaults, libel and slander and have stalk, hunt petitioner and his de facto spouse, as if petitioner and his spouse were [t]heir pray. (Greffin v. Northridge (1944) 153 P. 2d. 800, (Cal. Ct. App). Moreover, within their joint acts, concerts and ratifications and [t]heir wanton and willful disregard of their duties to maintain their property, falsely, maliciously and oppressively as on June 22, 2005 orally delegates, propose and subjects their duties to maintain their property onto petitioner to cut down/abate their created and maintained variances and nuisances. [9]

Hence, he who by his language or conduct leads another to what he would not otherwise have done shall not subject such person to loss or injury by disappointing the expectations upon which he acted, has been long established in California judicial definitions and has been codified since 1872. (See, California Evidence Code, Section 623; Ersa Grae Corp. v. Fluor Corp (1991) 1 Cal. App. 4th 613, 615, 623, 2 Cal Rptr. 2d. 288; Woods v. Griffin (1942) 163 S. W. 2d 322; Civil Code § 1605, §1584, §1650; Crail v. Blakelly (1973) 8 C. 3d. 744, 753; Statutes of Fraud, 35 Cal. Jur 3d. (1977), § 110, Revised 2005, Frauds, Statutes of § 95, Change of Position, Unconscionable injury, p. 157-158; 6 Witkin, Summary of California Law (10th Ed) Torts, Section 1730; In its usual application, estoppel is based upon a representation of fact that the party is not permitted to deny, in denying petitioner his constitutionality protected rights the

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[9] Under California law, bad faith waste can be committed without any affirmative act of destruction or spoliation, the mere failure to maintain property can be enough. (See, In re Mills (1988) 841 F. 2d. 902, 905).

petitioner is unconscionable injured. (1 Witkin Summary of California Law (10th Ed) Contracts, Section 244; City of Long Beach v. Mansell (1970) 3 Cal. 3d. 462, 488-489, [Citations], 91 Cal. Rptr. 23, 476 P.2d. 423; 42 CJS Improvements § 5, Pp. 46, Estoppel of Owner; See, Unjust enrichment in Ghirardo v. Antonioli (1996) 14 Cal. 4th 39, 51-52; Cal. Insurance Code § 530, 533). Moreover, the real parties in interest continue to interfere and attempt to interfere with petitioner's right to the enjoyment of his life and property, thereto they continue to create and maintain their dug run gravel and Oak tree and its roots with eminent perils torts petitioner and his property. (Greffin v. Northridge (1944) 153 P. 2d. 800, (Cal. Ct. App). [10]

VERIFICATION

I, Juan Bautista Rivera, am the petitioner in the above-entitle proceeding. I certify and declare that I have read the foregoing, that I know its contents, and that I am informed and believe the matters stated within are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

WHEREFORE, petitioner prays that:

1. That the respondent judgment be stayed.

2. That a writ of certiorari issue under the seal of this Court commanding the Superior Court of Solano County, State of California to certify

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[10] In Hilliard v. A.H. Robins Co. (1983) 148 Cal. App. 3d 374, 401, 196 Cal. Rptr. 117, evidence showing willful disregard in a punitive damages case in which subsequent remedial action was not taken. (See, *Petitioner Exhibits "8-9" dated May 6, 2005 and November 11, 2003*).

to this court, at a specified time and place, a transcript of the record and proceedings described above, so that they may be reviewed by this court.

3. That the foregoing cause be heard and fully considered by this court and that the order awarding the real parties in interest any monetary damages be annulled and set aside as a completed act in excess of jurisdiction.

4. For recovery of cost incurred in the proceedings.

5. For such other further equitable relief as the court may deem proper.

Dated: 7-3-07

Juan Bautista Rivera
Petitioner, In Pro per
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